TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1020.~~ 630

WILLIAM R. FOSDICK, AND JAMES D. FISH, AND FREDERICK W. HUIDEKOPER ET AL., APPELLANTS,

vs.

THE SOUTHWESTERN CAR COMPANY, INTERVENER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 31, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 1029.

WILLIAM R. FOSDICK, AND JAMES D. FISH, AND FREDERICK W. HUIDEKOPER, ET AL., APPELLANTS,

vs.

THE SOUTHWESTERN CAR COMPANY, INTERVENOR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Order appointing receiver	2	1
Amended bill of complaint	7	3
Answer to amended bill of complaint	71	58
Petition of intervening bondholders	99	67
Leave to Stephen Osgood et al. to file petition and reference to master	110	74
Petition of Southwestern Car Company	110	74
Petition of Southwestern Car Company referred to master	128	80
Answer to petition of Southwestern Car Company	129	80
Decree	134	82
Report of master confirmed and deed to purchasers	153	97
Report of master	160	100
Exceptions to master's report	173	105
Decree	175	106
Appeal bond	178	107
Clerk's certificate	181	108

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the judges thereof, on Saturday, the sixth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and second year.

WILLIAM H. BRADLEY, *Clerk.*

WILLLIAM R. FOSDICK AND JAMES D. FISH
v.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company et al. } In chancery.

In the matter of the Southwestern Car Company.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that on the 20th day of May, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Thomas , judge, is the following order, to wit:

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company et al. } In chancery.

This cause came on to be heard, and after being argued by counsel upon consideration by the court, it is ordered, adjudged, and decreed that Adna Anderson be, and he is hereby, appointed receiver herein, to take possession of the money and assets, real and personal, road-bed, road, iron, ties, lands, rights of way, mines, rolling-stock, leases, franchises, and all other rights and property, of whatever nature and kind, of the Chicago, Danville and Vincennes Railroad Company, wherever the same may be found within the State of Illinois, with power to manage, control, and exercise all the franchises and property whatsoever of the said railroad company within said State, and if need be, under the direction of the court, to sell, transfer, and convey the whole or any part of the property of said railroad company, and with power to prosecute and defend all suits brought by or against the said railroad
3 company, whether heretofore or hereafter commenced, whether in the name of said railroad company or otherwise, to defend all suits brought against him as such receiver or affecting his receivership, and to bring such suits in the name of said railroad company as he may be advised by counsel to be necessary and proper in the discharge of the duties of his office, and for acquiring, securing, and protecting the assets, franchises, property, and rights of the said railroad company.

And it is further ordered that the said defendant, The Chicago, Danville and Vincennes Railroad Company, and every other person or persons who may have or hold any part or portion of the property of said railroad company, by, through, or under the said company, or for its use and benefit, shall assign, transfer, and deliver over to said receiver all property, real, personal, and mixed, of the said railroad company, wheresoever found within the said State of Illinois, and all contracts in which said railroad company is interested, all the books, papers, vouchers, and evidences of indebtedness, moneys and assets of said company, and all

other effects of every kind, name, and nature which belong to said
4 company or are held for its use and benefit, or in which it has any beneficial interest.

It is further ordered, adjudged, and decreed that the said receiver have full power and authority to enquire after, receive, and take possession of all said property, debts, equitable interests, things in action, and other effects, and for that purpose to examine the said defendant, The Chicago, Danville and Vincennes Railroad Company, and the officers of said company, and such other persons as he may deem proper, on oath, before Henry W. Bishop, master in chancery of this court, from time to time, as he may deem necessary.

It is further ordered, adjudged, and decreed that the said receiver keep a full and accurate account of his acts and doings as such receiver, and report the same to this court, from time to time, as he may be hereafter directed by the order of this court. And in the meantime, and until the further order of this court, to run, operate, and manage the said road, and pay the expenses thereof, and to manage and control all said property and affairs of said company.

5 And the said receiver is hereby empowered and authorized to employ such counsel and attorneys as he may deem necessary to manage in his behalf such suits and other affairs as have or may arise, and to advise such receiver in relation to the performance of his duties therein.

It is further ordered, adjudged, and decreed that said receiver may use the moneys of the said defendant, The Chicago, Danville and Vincennes Railroad Company, for any and all of the purposes stated in this order.

It is further ordered, adjudged, and decreed that the said receiver shall, as speedily as possible, examine into the condition of the property and assets of the said road, its contracts, leases, running arrangements, its business and affairs, and take an inventory of its moveable property, and make a schedule of its floating indebtedness for labor and supplies, and report the same to this court as soon as may be, with his recommendations as to the proper disposition of the same and payment thereof.

It is further ordered, adjudged, and decreed that the said receiver, before entering upon any of his duties in this behalf, shall enter
6 into bond in the penal sum of one hundred thousand dollars, with security to be approved by Henry W. Bishop, master in chancery of this court, conditioned for the faithful performance of his duties as such receiver, and that he will duly account for and pay over, upon the order of this court, all moneys, properties, and effects which he shall receive by virtue of this order, and which shall remain from the operation and management of the said railroad property.

Afterwards, to wit, on the 14th day of September, A. D. 1875, said complainants, by their solicitors, filed in said clerk's office their amended bill of complaint in said entitled cause, which said amended bill is in the words and figures following, to wit:

7 UNITED STATES OF AMERICA,
Nothern District of Illinois:

In the circuit court thereof.

WILLLIAM R. FOSDICK AND JAMES D. FISH
vs.
CHICAGO, DANVILLE & VINCENNES RAILroad Company, James W. Elwell, and R. Biddle Roberts. } In chancery.

To the judges of said court, in chancery sitting:

William R. Fosdick and James D. Fish, who are each citizens of the State of New York, by leave of court first had and obtained, bring this their amended bill against the Chicago, Danville & Vincennes Railroad Company, James W. Elwell, and R. Biddle Roberts.

And thereupon your orators complain and say that the said railroad company was organized as a corporation under and by virtue of the laws of the State of Illinois, during the year A. D. 1865, and from thence hitherto has been and still is such corporation, and a citizen of the State of Illinois; and the said James W. Elwell is a citizen of the State of New York, and said R. Biddle Roberts is a citizen of the State of Illinois.

Complainants further allege that the said railroad company was organized under an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Chicago, Danville & Vincennes Railroad Company," approved February 16th, A. D. 1865, and from thence hitherto has been engaged in business, under and by virtue of the said act, at and within the northern district of Illinois; that said corporation was by its said charter, among other things, authorized and empowered to locate, construct, build, maintain, and operate a railroad, with single or double tracks, from a point in Lawrence County, on Wabash river, opposite Vincennes, in the State of Indiana, upon the
8 most eligible route to and into the city of Chicago, by way of Paris, in Edgar County, to Danville, in Vermillion County, and to lay out and locate their said road one hundred (100) feet in width through the whole length thereof; also to unite and consolidate its said railroad, stock, and property with that of any other railroad company or companies, within this or any other State, whose line or lines of road should cross or intersect the railroad authorized by said charter, or be built along or upon the line thereof, upon such terms as should be mutually agreed upon between said company and such other company, and to execute such contracts as should secure the object of such consolidation.

Complainants further allege that in and by said charter said railroad company was authorized to borrow money on the credit of said company, not exceeding its authorized capital stock, at a rate of interest not exceeding ten per cent. per annum, payable semi-annually, and to execute bonds therefor with interest coupons annexed, and to secure the payment of the same by mortgage or deed of trust upon the whole or any part of the said railroad and the income of the company then existing or thereafter to be acquired.

Complainants further allege that in and by said charter the directors of said corporation were authorized to negotiate and sell the bonds of

said company upon such terms and in such places, either within or without the State of Illinois, and at such rates and for such prices as in their opinion should best advance the interests of said company.

Complainants further allege that thereafter, and prior to the 10th day of March, 1869, the capital stock of said corporation was the sum of two million five hundred thousand dollars ($2,500,000); and that thereafter, and on the 10th day of March, A. D. 1869, the said corporation, for the purpose of constructing and putting in operation said line of railroad, caused to be executed, under the hand of its president and its corporate seal, twenty-five hundred bonds (2,500), numbered from one (1) to twenty-five hundred (2,500) inclusive, each for the sum of one thousand dollars ($1,000), payable in gold coin on the 1st day of April, in the year 1909, with interest at the rate of seven (7) per cent. per annum in gold coin, payable semi-annually, on the first days of April and October in each year, on delivery of said coupons, in the city of New York, at such place as should be designated by the company. A copy of one of said bonds and one of the interest coupons thereto annexed is attached to the original bill, and marked "Exhibit A"; and complainants refer to the said exhibit and make it a part of this their amended bill.

Your orators further show to your honors that for the purpose of securing the final payment of the said issue of twenty-five hundred bonds (2,500) with all the interest coupons thereto annexed, said corporation executed and delivered to the complainants, William R.
9 Fosdick and James D. Fish, as trustees, a mortgage or deed of trust, conveying to them for the benefit of every holder of said bonds, or any of them, all the railroad of said company extending from Chicago, in Cook County, in the State of Illinois, southeasterly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, and thence southeasterly to a point on the State line of Indiana, and all its franchises, equipments, property, tolls, rents, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels connected with or used in the using or operating of said railroad or appertaining thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points, which said railroad company then had, owned, or possessed, or might thereafter acquire, either in law or equity, of every kind whatever appertaining thereto; a copy of which said mortgage is attached to the original bill in this cause, marked as "Exhibit B" thereof; to which said copy complainants refer, and make the same a part hereof.

Your orators further allege that said trust deed was duly executed under the hands of the president and secretary of said company, and under its corporate seal, and was on the 10th day of March, A. D. 1869, delivered to said trustees, who then and there accepted the trust thereby created and entered upon the performance of their duties as such trustees.

Your orators further allege that said trust deed, so executed and delivered to them as aforesaid, was thereafter, to wit, during the month of March, 1869, duly recorded in each of the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, in the State of Illinois, and then and there became and was a first lien upon all of the franchises and property of every kind, name, and nature whatever belonging to the said railroad company, or thereafter acquired by it within the said

counties, and all the line of railroad then built or thereafter to be built by the said company, within the said counties, between the city of Chicago, in the county of Cook, and Danville, in the county of Vermillion.

Your orators further allege that all of the said twenty-five hundred (2,500) bonds were certified by them as such trustees, and were thereafter sold and disposed of by the said corporation, and that all of said twenty-five hundred (2,500) bonds are now outstanding, and a valid and legal claim against the said corporation, and that the said trust deed securing the same is now a valid and subsisting first lien upon all of the property and franchises of the said company, within the counties aforesaid.

Your orators further allege that thereafter, and on the 4th day of March, A. D. 1872, the said Chicago, Danville & Vincennes Railroad Company entered into articles of consolidation with the Rossville & Indiana Railroad Company, under and by virtue of which the said two corporations became and were a consolidated corporation by the name and style of the Chicago, Danville & Vincennes Railroad Company; a copy of the said articles of consolidation is attached to the original bill in this cause, as Exhibit C thereof, and is hereby referred to and made a part of this amended bill.

Your orators further show unto your honors that thereafter, and on the 9th day of March, A. D. 1872, said Chicago, Danville & Vincennes Railroad Company entered into certain articles of consolidation with the Western Indiana Railroad Company, under and by virtue of which the said two corporations became and were a consolidated corporation by the name and style of the Chicago, Danville & Vincennes Railroad Company; a copy of the said articles is attached to the original bill in this cause, as Exhibit D thereof, and is herein referred to and made a part of this bill.

Your orators further show to your honors that the said Western Indiana Railroad Company was, prior to the said last-mentioned consolidation, a corporation organized under the general laws of the State of Indiana; and that the said Chicago, Danville & Vincennes Railroad Company, by virtue of the said last-mentioned consolidation, became and was a corporation of the State of Indiana, as well as a corporation of the State of Illinois; and as such corporation in the State of Indiana became and was vested with the lawful power under the laws of said State to locate, construct, and operate a continuous line of railway, extending from the boundary between the States of Indiana and Illinois at a point in Warren County, southwardly, through the counties of Warren, Fountain, Park, and Clay, to the town of Brazil, in said Clay County, in the State of Indiana.

Your orators further show to your honors that thereafter, and on the 12th day of March, A. D. 1872, the said Chicago, Danville & Vincennes Railroad Company, for the purpose of aiding and providing the means required for the construction and equipment of the division of the road of said company lying and being in the State of Indiana, caused to be executed its bonds, amounting to one million five hundred thousand dollars ($1,500,000), being fifteen hundred (1,500) bonds of one thousand dollars ($1,000) each, payable forty (40) years after date, with interest at the rate of seven per cent. per annum, payable on the first days of April and October of each year, both principal and interest payable in American gold coin; which said last-mentioned bonds were numbered from 2,501 to 4,000 inclusive, and had attached thereto interest coupons; which said bonds and coupons were of the same form as the twenty-five hundred (2,500) bonds hereinbefore mentioned and described.

twenty (20) miles south of the city of Chicago, and runs thence southerly to Danville, in Vermillion County, a distance of one hundred and eight (108) miles, with a branch from Bismark, in Vermillion County, to the east line of the State of Illinois, a distance of about seven (7) miles, in all a distance within said State of about one hundred and fifteen (115) miles.

Your orators further allege that said railroad company runs its cars from near Dalton into the city of Chicago, over the line of the Chicago & Southern Railway, a distance of about twenty-one (21) miles; that it also uses a portion of the line of the Pittsburg, Cincinnati & S't Louis Railway, within and near the city of Chicago; and within said city the said company uses and maintains side-tracks and appurtenances of its own.

Your orators further allege that, within the State of Indiana, the said company has constructed its line of railroad from the State line, between the States of Indiana and Illinois, at a point where the Bismark branch of the Illinois division intersects the line between the States of Indiana and Illinois, to Snoddy's Mills, a distance of eighteen (18) miles between said points, and has constructed various branches to coal mines, in all about five (5) miles. From Snoddy's Mills to Montezuma, a distance of about eighteen (18) miles, your orators are informed and believe, and charge the fact to be, that the said company has procured the right of way and has finished about twenty (20) per cent. of the grading; from Montezuma to Brazil coal-field, a distance of twenty-five (25) miles, your orators are informed and believe, and, therefore, charge, that said company has procured the right of way and finished about eighty-five (85) per cent. of the grading, and all of the bridging, and has laid about two miles of the track, the total length of line from the State line to the Brazil coal-fields being about sixty-one (61) miles; that the
14 said portion of said road within the State of Indiana is known as the Indiana division thereof, and the portion within the State of Illinois as the Illinois division thereof.

Your orators further allege that said railroad company has paid all of the coupons maturing upon said Illinois division bonds, and said Indiana division bonds, up to and including the coupons maturing on the first day of April, 1873, and that none of the coupons maturing since that time, or any part thereof, have ever been paid, but the said company, though often requested, has never paid the same, but so to do has made default.

Your orators further show to your honors that after said railroad company had made default in the payment of the coupons of the said bonds maturing October 1st, 1873, and, to wit, on the 11th day of November, 1873, the said railroad company issued a circular to its bondholders, in and by which it proposed that the holders of bonds should deposit with your orators, William R. Fosdick, as trustee, the coupons due October 1st, 1873, April 1st, 1874, October 1st, 1874, and April 1st, 1875, and receive in exchange therefor the convertible bonds of said railroad company dated January 1st, 1873, payable February 1st, 1893, bearing interest at seven (7) per cent. per annum, with coupons payable the 1st of February and August of each year, principal and interest in gold; said bonds to bear interest from February 1st, 1874, and to be received by the bondholders at seventy-five (75) per cent. of their par value; also scrip certificates bearing interest the same as the bonds, to be issued for fractional sums, and exchangeable for the convertible bonds when presented in sums of five hundred (500) or one thousand (1,000) dollars; the coupons thus deposited in trust were to be held by

the trustee until October 1st, 1876, after which the coupons were to be cancelled by the trustee and surrendered to the company; but in case of non-payment of any coupons becoming due up to October 1st, 1876, the coupons deposited with the trustee were to be surrendered to the original owners upon the return of the second mortgage bonds, or scrip certificates which had been issued for them.

Your orators further allege that, in response to said proposition, coupons to a considerable amount were delivered to said special trustee, and there were issued in lieu thereof forty-four (44) convertible bonds of one thousand (1,000) dollars each, and twenty-eight (28) convertible bonds of twenty-five hundred (2,500) dollars each, and about thirty-five hundred (3,500) dollars of scrip certificates for fractional sums less than five hundred (500) dollars.

Your orators further show to your honors that thereafter, and on or about the 20th of November, 1873, the said railroad company issued to its said bondholders another circular, which proposed the following scheme: That the bondholders should deposit the four coupons, from October 1st, 1873, to April 1st, 1875, inclusive, with your orator, William R. Fosdick, as trustee, and should receive and exchange therefor certificates of indebtedness, payable in five (5) years from February 1st, 1874, with interest payable semi-annually, on the first days of February and August of each year, principal and interest payable in gold, the coupons to be held by the trustee until after the maturity of the certificate of indebtedness, on the 1st of February, 1879, when they were to be cancelled by said trustee, and surrendered to the company; but in the case of the non-payment of the interest or the principal of the certificate at maturity, or of the coupons on the first mortgage bonds, between October 1st, 1875, and February 1st, 1879, both inclusive, then the coupons were to be returned to the original owners, upon surrender of the certificates, with all their original rights to proceed against the company unimpaired.

Your orators further allege that the holders of two million eight hundred and one thousand (2,801,000) dollars of the said four thousand (4,000) bonds of one thousand (1,000) each accepted one or the other of the two propositions hereinbefore set forth, and that under the last mentioned proposition there were issued certificates of indebtedness amounting to three hundred and forty-seven thousand nine hundred (347,900) dollars, which said certificates were all of the same form, and your orators hereto attach a blank certificate, with coupons annexed, marked "Exhibit H," and make it a part of this their amended bill.

Your orator further shows unto your honors that the convertible bonds mentioned in said first proposition were part of an issue of bonds of said company to the amount of one million of dollars ($1,000,000), dated January 1st, 1873, due February 1st, 1893, with interest at seven (7) per cent. per annum, payable semi-annually, principal and interest payable in gold coin, which said bonds were secured by a certain deed of trust, dated the 16th day of December, 1872, in and by which the said railroad company conveyed to James D. Fish and James W. Elwell, of the city of New York, as trustees, all of its line of railroad in each of the States of Illinois and Indiana, with all of the franchises, equipments, property, and appurtenances thereof, a copy of which mortgage is hereto attached, marked "Exhibit I," and made a part hereof.

Your orators further aver that the said James D. Fish, named as one of the trustees in the said convertible mortgage, has declined to perform the duties of trustee under said mortgage, and has resigned the said office, and that the said defendant, James W. Elwell, whose appear-

ance has heretofore been entered in this cause, is the sole remaining trustee under the said mortgage.

And your orators allege that the said convertible mortgage is in all respects subject to the three mortgages hereinbefore mentioned and described, to wit, the Illinois division, dated March 10th, 1869, which is a first lien upon all of the Illinois division of the said railroad; the Indiana division mortgage, dated March 12, 1872, which is a first lien upon all of the Indiana division of said road; and the supplemental mortgage, dated April 24, 1872, which is a second lien upon the entire line of said railroad. And your orators aver that the said convertible mortgage is, as they are advised and believe, only a third lien upon said line of railroad in the States of Indiana and Illinois.

16

Your orators further allege that they are informed and believe that only about one hundred and seventy thousand ($170,000) dollars of the said convertible bonds have been sold by the said railroad company; that about seven hundred and eighty-five thousand ($785,000) dollars of said bonds have been hypothecated as collateral to certain of the floating indebtedness of said company, and that about forty five thousand ($45,000) dollars of said bonds have not been issued at all.

Your orators further show unto your honors that the said railroad company failed to pay all the coupons upon said certificates of indebtedness due February 22d, 1872, and that said company has not paid any of the coupons upon said certificates of indebtedness which fell due on the first day of August, 1875.

Your orators further show to your honors that they are advised and believe that the said railroad company have never paid any of the coupons upon any of the four millions ($4,000,000) of bonds which were not funded as aforesaid, and which matured on and subsequent to October 1st, 1873, and that all of said coupons, to wit, the coupons upon one million one hundred and ninety-nine thousand dollars ($1,199,000) of said bonds have long since become due and remain wholly unpaid and unsatisfied, and that the owners thereof have never in any way consented to the said default.

Your orators further aver that they are informed and believe, and therefore charge the fact to be, that the said railroad company are wholly unable to pay any of said overdue coupons upon the said four thousand (4,000) bonds on the said overdue coupons upon said certificates of indebtedness, or the said coupons upon said convertible bonds which were delivered to coupon holders in lieu of the coupons falling due October 1, 1873, April 1, 1874, October 1, 1874, and April 1st, 1875, but that said company is insolvent, and has a floating indebtedness of about the sum of eight hundred and fifty thousand dollars, which it is wholly unable to pay, a large portion of which floating indebtedness is secured by the hypothecation of the convertible bonds hereinbefore mentioned as collateral thereto, and a portion of which has been prosecuted to judgment and execution.

And your orators further show to your honors that heretofore, and on or about the 12th day of January, A. D. 1875, the said railroad company made a further issue of currency bonds to the amount of one million ($1,000,000) dollars, due January 12, 1877, and to secure the same executed and delivered to the defendant, R. Biddle Roberts, who is a citizen of the State of Illinois, and a resident of the city of Chicago, in said State, a certain instrument in writing commonly called a chattel mortgage, a copy of which, marked "Exhibit K," is hereto attached and made a part of this bill, which said instrument

17

purporting to convey, assign, and mortgage to the said Roberts divers engines, cars, tools, and machinery, more specifically described and specified in said instrument, and which, as your orators are informed and believe, covers the whole or the greater part of all the equipment which belongs to and is used on the said line of railroad.

And your orators allege that the said instrument was not executed, acknowledged, and filed for record as provided by law, and that the same is, as they are advised and believe, null and void.

And your orators further allege that if the said instrument had been so executed, acknowledged, and recorded as to become a valid and binding chattel-mortgage upon the property therein described, the same would have been in all respects subject to each of the three mortgages hereinbefore described, and dated March 10, 1869, March 12, 1872, and April 24, 1872, and that the same is in fact in all respects subject to the said three mortgages so given to your orators as aforesaid.

Your orators further show to your honors that they are informed and believe that none of the said chattel-mortgage bonds have ever been sold by said company, but that the same, to the amount of nine hundred and thirty-six thousand ($936,000) dollars, have been put in the hands of various holders of the floating indebtedness of said company as collateral thereto, and that said bonds to the amount of sixty-four thousand ($64,000) dollars have never been issued at all.

Your orators further allege that, by reason of the insolvency of said company, it will be utterly impossible for the said company to fulfill the terms and conditions of the certificates of indebtedness hereinbefore described, and issued by the president of said company, or to pay the coupons attached thereto, and that by reason thereof, and in consequence of the default of said company in payment of the coupons attached to said certificates of indebtedness, the owners of the unpaid coupons of the said four millions (4,000,000) of bonds are entitled to rescind the said funding arrangement, and to demand and enforce payment of the said coupons so funded as aforesaid.

And your orators further allege that, by reason of the default of said company in the payment of the coupons due October 1, 1873, and subsequent thereto, which have never been funded, the principal of all of the said bonds has, by the terms and conditions of the mortgage securing the same, become due and payable, and all of the said Illinois division bonds, and of the said Indiana division bonds, were, by the terms and conditions of the mortgage securing the same, and in
18 consequence of the defaults aforesaid, due and payable prior to the commencement of this suit.

Your orators further allege that of the said Illinois division bonds six hundred and ninety-eight thousand dollars thereof have never been funded by the holders thereof, and the holders thereof have never in any way consented to the conditions of the default in the payment of interest thereon.

Your orators allege that they have been requested by the holders of a majority of said Illinois division, and also by the holders of a large number of the said Indiana bonds, to proceed to collect the principal and interest of said bonds by foreclosure and sale of all of the railroad, franchises, property, and appurtenances of said company, within the State of Illinois.

Your orators further allege that said Indiana division is wholly insufficient to secure the payment of the said Indiana division bonds in full, and that said Illinois division of said road is more than sufficient to secure the payment of said Illinois division bonds in full, but is not suf-

ficient security for the payment in full of the whole of the Indiana division bonds, after the said Illinois division bonds have been first paid out of the proceeds thereof.

Inasmuch, therefore, as your orators have suffered loss and damage in the premises, and are remediless, except in equity, where matters of this kind are properly cognizable and relievable, they pray that the said Chicago, Danville and Vincennes Railroad Company, and the said James W. Elwell, whose appearance have already been entered in this cause as parties defendant thereto, may be required to answer this your orators' amended bill, but without oath, which is hereby expressly waived, and that the said R. Biddle Roberts may be made party defendant hereto, and summoned to answer this your orators' bill, but without oath, which is hereby expressly waived; and that the receiver heretofore appointed upon the prayer of the original bill in this cause may still hold the said railroad, its equipment and appurtenances, and operate the same under the order and direction of this honorable court; and that an account be taken of the amount due by the said railroad company upon the said Illinois division bonds and upon the said Indiana division bonds separately, and that the said railroad company be ordered to pay the amount so found due upon said bonds, severally, within a short time, to be limited by this honorable court, and that upon default thereof the said Illinois division of the said railroad, together with all of the franchises, equipment, and appurtenances thereof, may be sold by the master in chancery of this court, for the payment, first, of the said twenty-five hundred (2,500) Illinois division bonds; and, secondly, of the fifteen hundred (1,500) Indiana division bonds, which are the first and second liens upon the said Illinois division of said railroad, its equipments, franchise, and property, as hereinbefore
18a set forth, or for such other and further relief as to your honors shall seem meet and to equity shall appertain.

WILLIAM R. FOSDICK AND
JAMES D. FISH,
Trustees,
By GEO. C. CAMPBELL, *their Solicitor.*
LAWRENCE, CAMPBELL & LAWRENCE, *of Counsel.*

EXHIBIT A.

Form of bond.

UNITED STATES OF AMERICA, STATE OF ILLINOIS.

Chicago, Danville and Vincennes Railroad Company.

First mortgage seven per cent. sinking fund bond, principal and interest payable in gold.

No. .] [$1,000.

Know all men by these presents that the Chicago, Danville and Vincennes Railroad Company, a corporation existing under the laws of the State of Illinois, for value received, acknowledges itself indebted to Joseph E. Young in the sum of one thousand dollars, in United States gold coin at par, which it promises to pay in the city of New York to him or bearer, on the first day of April, in the year one thousand nine hundred and nine, with interest at the rate of seven per centum per annum, in gold coin as aforesaid, payable semi-annually, on the first

days of April and October in each year, on the delivery of the annexed interest warrants, in the city of New York, at such place as may be designated by said company by advertisement published in said city.

This bond, with others of like tenor and date, amounting, in the aggregate, to a sum not exceeding two millions and five hundred thousand dollars, is secured by a mortgage on the railroad, franchises, income, equipments, and property of said company, duly made and delivered to trustees, whose names are signed to the certificate of authentication of this bond, for the benefit of the holder hereof, dated the tenth day of March, one thousand eight hundred and sixty-nine, and duly recorded.

This bond is entitled to all the benefit to be derived from a sinking fund, to be annually created and invested as provided for in the deed of trust or mortgage above referred to. And it is agreed between said company and the holder of this bond that no recourse shall be had for its payment to the individual liability of any stockholder of said
18*b* company; and that in case of any default in the payment hereof, the said company hereby waives the benefit of any extension, stay, or appraisement laws now existing or that may hereafter exist.

This bond shall pass by delivery or by transfer on the books of the company, in the city of New York. After a registration of ownership, certified hereon by the transfer-agent of the company, no transfer, except on the books of the company, shall be valid, unless the last transfer be made to bearer by the transfer-agent of the company, which shall restore transferability by delivery; but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of each holder.

This bond shall not be valid or obligatory until it shall have been authenticated by a certificate endorsed hereon, and duly signed by the trustees under the mortgage aforesaid.

In witness whereof the said company have caused the foregoing to be attested in its behalf by its president and secretary, and its corporate seal to be affixed hereto, and the interest-warrants hereto annexed to be signed by its secretary, at the city of Chicago, in the State of Illinois, this tenth day of March, eighteen hundred and sixty-nine.

President.

Secretary.

(Coupon.)

$35.

The Chicago, Danville and Vincennes Railroad Company will pay the bearer, at its agency in the city of New York, thirty-five dollars in coin, on the first day of , A. D. , for semi-annual interest on its first-mortgage bond, No.

Secretary.

(Endorsement.)

No. . Chicago, Danville and Vincennes Railroad Company. Seven per cent. sinking-fund bond. $1,000. Principal and interest payable in United States gold coin at par. Principal payable April 1st, 1909. Interest payable April 1st and October 1st, in New York.

(Trustees' certificate.)

We certify that this bond is one of a series amounting to $2,500,000, described in and secured by the deed of trust or mortgage mentioned herein, bearing date March 10th, 1869, which is recorded according to law.

Trustees.

19 EXHIBIT B.

Form of mortgage.

This indenture, made this tenth day of March, in the year one thousand eight hundred and sixty-nine, between the Chicago, Danville and Vincennes Railroad Company, a corporation of the State of Illinois, party of the first part, and William R. Fosdick and James D. Fish, of the city and State of New York, trustees, upon certain trusts hereinafter specified and provided, the party of the second part:

Whereas the Chicago, Danville and Vincennes Railroad Company, a corporation of the State of Illinois, under and in pursuance of the provisions of the act incorporating the same, has commenced to construct and put in operation a railroad from Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, and then southeasterly to a point on the State line of Indiana, joining and connecting at said point with the Evansville, Terre Haute and Chicago Railroad, and is now engaged in constructing the same;

And, for the purpose aforesaid, needs, and has resolved to purchase and transport iron rails, chairs, spikes, and other iron and materials necessary therefor, and engines, cars, and other rolling stock and machinery to be used thereon; and to borrow a portion of the money necessary to make such purchases and to pay for such transportation, and the construction, completion, and equipment of said road;

And whereas, at a meeting of the board of directors of the said Chicago, Danville and Vincennes Railroad Company, the party of the first part, held pursuant to law, on the second day of February, in the year 1869, the said board of directors resolved and enacted an order and resolutions as follows, to wit:

"Resolved, That, to aid in providing the means required for the construction and equipment of this company's road, an issue of bonds shall be made by the company, amounting to two millions and five hundred thousand dollars, each bond to be for the sum of $1,000, and to bear seven per cent. per annum interest, payable semi-annually, on the first days of April and October in each year, and the principal to be payable on the first day of April, 1909, and both principal and interest to be payable in United States gold coin, at par, in the city of New York; and each bond to contain an express waiver of all recourse by the holder of the same to any individual liability of the stockholders of this company.

"That said bonds shall be dated as made on the tenth day of March, A. D. 1869.

"In case default be made in the payment of any half year's interest on any of said bonds, and the warrant for said interest shall have
20 been presented and its payment demanded, and such default shall have continued for six months after such demand, without the

consent of the holder of said coupon or bond, then and thereupon the principal all such bonds shall become immediately due and payable. That a warrant for each semi-annual payment of interest shall be made and authenticated, for and on behalf of this company, by the secretary of this company, and annexed to each bond. That said bonds shall be prepared by the president of the company, and signed by him for and on behalf of this company, and attested by the secretary, and shall have annexed to them a certificate of authentication of the trustee or trustees, under the mortgage made to secure them, and shall not be issued or obligatory without such certificate.

"That from and after the first day of April, A. D. 1873, and until the maturity of said bonds, there shall be annually created, paid, and deposited with a sinking-fund commissioner or commissioners, to be appointed by the board of directors, and to hold office at the pleasure of the board, a sinking fund, to aid in the final redemption of said bonds, of an amount of money derived from the net earnings of said road and property equal to one-half of one per cent. on the whole amount of said issue of bonds at the time of any such payment outstanding. Said fund, and all investments and accounts thereof, and its management, shall always be under the control of this board, and shall be from time to time continually invested by the commissioner or commissioners in the purchase of said bonds or bonds of the Government of the United States, or of the State of Illinois; and the interest on all such investments, as collected, shall be added to and continually compounded with said fund, and the same shall be used and appropriated solely to redeem and eventually pay off said issue of bonds hereby provided to be made.

"No bond of said issue purchased by said fund shall thereby be canceled, but shall, with its coupons, be stamped as owned by said sinking fund, and it, or its amount if destroyed, shall remain a liability against the company, and the interest shall be paid to the said sinking fund the same as paid on other bonds, and shall be added to said fund until the whole of said issue of bonds shall have been absorbed or otherwise paid off, when the whole issue shall be canceled. Any bonds of said issue which may be in said sinking fund at any time may be destroyed by order of the board of directors of said company; but in such case the semi-annually accruing interest on the amount so destroyed must thereafter be paid to said sinking fund. The bonds and securities belonging to the sinking fund shall be kept in the office of the sinking-fund commissioner or commissioners, which shall be at or near the principal office of said railroad company.

"That for the purpose of securing the final payment of said issue of $2,500,000 of bonds, with all interest to accrue thereon, this company
21 will make and deliver to William R. Fosdick and James D. Fish, as trustees, a mortgage and deed of trust, conveying to said persons as trustees, for the benefit of every holder of such bonds, or any of them, all the road of this company, extending from Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, and thence southeasterly to a point on the State line of Indiana, where it will join and connect with the *the* Evansville, Terre Haute and Chicago Railroad, with all the property, rights, and franchises of this company of every kind and description whatever, pertinent to said road between said terminal points, and all the income to be had and derived from operating the same, in trust, to secure the final payment of said bonds as aforesaid, with all the rights, covenants, powers, and authority, in case default be made by this company in such payments as in said deed of trust shall be speci-

fied, to foreclose said mortgage, and to sell the property so mortgaged, or to take possession of and operate the same, and receive the incomes thereof; but not in any case, before any default, to disturb or interfere with this company in the possession, control, and management thereof, or from receiving the incomes thereof, or from selling or exchanging any of the personal property, or machinery, or equipments thereof, or any of the lands or real estate not necessary for the use and operation of the railroad; as to all of which, as will be in said mortgage and deed of trust specifically stated, agreed upon, and set forth.

"That the president of this company is hereby authorized and fully empowered to make and sign, and execute and seal with the corporate seal of this company, the said mortgage and deed of trust, and to acknowledge the same for and on behalf of this company for record; and on the acceptance of said trust, and signing the said deed by the said trustees, to cause the same to be recorded according to law, and thereupon to make, sign, execute, and prepare said $2,500,000 of bonds for issue and sale, as shall be hereafter ordered by this board."

And whereas the said Chicago, Danville and Vincennes Railroad Company, party of the first part, hath, in accordance with the provisions of said order and resolution, made and executed bonds to the amount of two millions and five hundred thousand dollars, of the form, denomination, and character prescribed by said order and resolution, and hold the same to be authenticated, issued, used, and disposed of for the purposes in said order and resolution stated:

Now, therefore, in further pursuance of said order and resolution, and to the end and purpose of securing and assuring the punctual payment of said two millions and five hundred thousand dollars of bonds, and every part thereof which may be issued, to the persons who may become the holders of the same, or any of them:

22 This indenture witnesseth that the said Chicago, Danville and Vincennes Railroad Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of the second part, trustees aforesaid, at and before the ensealing hereof, the payment of which is hereby acknowledged, doth hereby grant, bargain, sell, enfeoff, release, assign, and convey unto the said William R. Fosdick and James D. Fish, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire railroad of the party of the first part, lying, being, and extending from its terminus, in the city of Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, and thence southeasterly to a point on the State line of Indiana, joining and connecting at said point with the Evansville, Terre Haute and Chicago Railroad, being in length about one hundred and forty miles, with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said party of the first part now has or owns and possesses, or may hereafter acquire, either in law or equity, of every kind whatever, pertinent thereto.

Provided, however, that this grant and conveyance aforesaid shall not include nor operate to transfer any lands, goods, chattels, property,

machinery, equipment, or other matters, which said company now owns, or may hereafter acquire, that need not be used for any purpose incident to the management or operation of said railway, or the repair thereof, or in the business of said railway company; nor any franchises, power, or corporate right to build that portion of the line of railroad which, by its charter, it is authorized to locate and construct, and not embraced within the terminal points hereinbefore described; but all which last-mentioned franchises and right of way shall be wholly excepted and exempt from these presents, and the grant and conveyance herein specified; nor shall these presents in any way prohibit the party of the first part from selling and conveying or otherwise disposing of the same, and all the proceeds thereof; nor from receiving, using, and applying any money or personal property of said company to the repairs of said road or its appurtenances, or to its current expenses, or to the purchase of necessary machinery, or the renewal thereof; and the board of directors of said company may likewise distribute and pay any net annual incomes and profits to stockholders, after paying the interest on the said bonds, and providing for any sinking fund required to be created and
23 kept. To have and to hold the said railway property, premises, interests, rights, and appurtenances mentioned as aforesaid, and hereby conveyed, or intended so to be, by this conveyance, unto the said party of the second part, as such trustees as aforesaid, and to their successors in said trust, or assigns, to and for the only use, benefit, and behoof of the said trustees, and their cestui que trust, their successors and assigns, forever; but in special trust and confidence, and upon the conditions following, that is to say:

1st. That this conveyance is for, and shall be by the said party of the second part, their successors and assigns, held, used, and owned solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds about to be issued as aforesaid by the party of the first part, and for enforcing the stipulations of said company as to said issue of bonds, and the disposal thereof and securing the same, and the final payment thereof, in their true intent and meaning, whether contained in said bonds, or the interest-warrants attached to them, or in this deed.

2d. That for the better assuring and confirming the title and powers of the said party of the second part, their successors and assigns, in the said premises and property hereby conveyed, and in and to any premises and property or rights hereafter accruing, or to be acquired by said party of the first part, appurtenant to said railroad, which is intended to pass or be passed by this conveyance, the said party of the first part, their successors and assigns, will and shall, as often as may be lawfully required by the party of the second part, or their successors or assigns, holding the above-granted trust, do such acts and make such other and further conveyances and assurances in law as such party of the second part shall, by counsel learned in the law, be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

3d. That if the said party of the first part, their successors or assigns, shall well and truly pay to the holders of said two millions and five hundred thousand dollars of bonds, so to be issued and hereby secured, the respective sums of money and interest due and accruing on said bonds on the days and times therein mentioned, and according to the tenor and effect of said bonds, then and thenceforth this indenture, and all the estate hereby granted, shall become and be utterly void and of no further effect; and the same shall be, by such payment, wholly an-

nulled and satisfied, without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part, or their successors.

4th. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds, or some of them, or until default shall have been made in respect to some-
24 thing herein required to be done by the said party of the first part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate the said railroad property and franchises, and appurtenances, and to renew, replace, and repair the same, and every part thereof, and take and receive, and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

5th. In case default shall be made in the payment of any interest, on any of the aforesaid bonds issued or to be issued, according to the tenor of the coupons thereto annexed, or of the provisions hereof; or, in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bond on which such default shall occur, the said party of the first part hereby covenants and agrees to and with the party of the second part, and their successors and assigns, that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to him or them, or to their agent, the actual possession of the herein granted and demised railroad and premises, together with all the books, records, papers, accounts, and money of said company, and all management and control thereof; and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the incomes and profits thereof; and if said property shall, after such taking possession thereof, be sold, then from the sale thereof; or such expenses may be paid from the sale of any personal property, as the said trustees may deem proper; and that said party of the second part and their successors, having taken such possession, may manage, operate, and control said road and property and all of its affairs, and appoint all needful agents and employees for that purpose, and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payment of the said interest so in default, according to the true intent and tenor of the said bonds and the coupons annexed, and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same, first paying all expenses of such possession and management, and all taxes, assessments, and charges on said property, and a just compensation for their own services as such trustees. But in any and all cases of such taking of possession by said party of the second part, and paying up any such default, and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money and accounts into the possession of the party of the first part; provided, that no such demand for such possession shall be made by said trustee or trustees, until they shall have been required by the holders of at least the one-half of all of the said issue of bonds which shall
25 then be unpaid and outstanding to make such demand, and to take such possession of said road and property.

6th. That in case default shall be made as aforesaid, and shall continue as aforesaid, it shall be lawful for the party of the second part, or

their successors in said trust, after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of to the highest bidder, all and singular the premises hereby conveyed or intended so to be, as an entirety at public auction, in the city of Chicago, State of Illinois, at such time as said party of the second part may appoint, first having demanded of the party of the first part full payment of all money then in default; and also first having given sixty days' notice of such time and place of sale, and a full description of the property so to be sold, by advertisement thereof in two newspapers, one published in Chicago, in the State of Illinois, and one published in the city of New York; and to adjourn said sale from time to time, in their discretion, and, if adjourned, to make such sale in manner aforesaid without further notice, at the time and place to which it may be so adjourned; and upon such sale, and receiving the purchase money therefor, to convey the same, by good and sufficient conveyances, to the purchaser or purchasers; and such sale and conveyance so made shall convey all the right, title, estate, interest, and property of the said party of the first part, of, in, and to the said road, premises, franchises, and property to the said purchaser in fee simple forever; and shall be a perpetual bar, both in law and equity, against the said party of the first part and their successors and assigns, and against all and every person claiming or to claim the said premises, or any part thereof, under them, forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities which may have been made or incurred by the party of the second part in operating and controlling and maintaining the said railroad and property, and in managing its business and affairs while in possession, and all payments for taxes, charges, and assessments on said premises or any part thereof, as well as reasonable compensation for their own services, to apply the proceeds of such sale to the payment of the interest of said two millions and five hundred thousand dollars of bonds, or so many of them as shall have been issued by said party of the first part and be then outstanding, pro rata, until all such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds pro rata until such principal shall be paid; and if any surplus remain after paying all of said matters, to pay such surplus to the party of the first part; and such payments shall be so made on said bonds, whether the same shall have become due or not at the time of such sale; provided, that said trustee or trustees may, in their discretion, sell the said premises as an entirety, and on doing so shall make legal distribution of the proceeds of such sale accordingly.

26 It is hereby declared that the receipt of said trustee or trustees, making any such sale to the purchaser of the premises for the purchase money, shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not after payment of said purchase money, and obtaining such receipt therefor, be liable, or in any way bound, to see said purchase money applied to this trust, or otherwise or in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

7th. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents, or by judicial authority, the said trustee or trustees may bid for and purchase, or cause to be purchased, the property so sold, or any part of it, in behalf of the holders of said bonds secured by this deed, then outstanding, at a reasonable price, if only a part be sold; but if the whole property be sold, at a price not exceeding the whole amount of said bonds and interest then outstanding.

8th. If default be made by the party of the first part in the payment of any half year's interest on any of said bonds, and the warrant or coupon for such interest shall have been presented, and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the said bonds here by secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding; and the said party of the second part may so declare the same, and notify the party of the first part thereof, and upon the written request of the holders of a majority of the said bonds then outstanding, shall proceed to collect both principal and interest of all such bonds outstanding by foreclosure and sale of said property, or otherwise, as herein provided.

9th. It is hereby mutually agreed by the parties hereto, that the trustees shall be responsible only for gross negligence and willful default, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly and satisfactorily indemnified against the same by one or more of said bondholders.

In case of the death, resignation, or inability to act of any trustee, the board of directors may appoint a successor, and failing to so appoint, any court of competent jurisdiction may appoint a trustee to fill such vacancy on the application of the holders of the one-sixth part of the bonds hereby intended to be secured then outstanding, and such appointment by the board or by such court shall invest the trustee so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

27 And the said party of the first part hereby further covenants and agrees with the party of the second part, and their successors, and with the holders of each and all of the said issue of two millions and five hundred thousand dollars of bonds which may be issued, that the said party of the first part will create and make a sinking fund for the redemption of such bonds, and each of them, by setting aside and depositing with a sinking-fund commissioner or commissioners, to be appointed by the party of the first part for that purpose, from and after the first day of April, in the year 1873, and annually thereafter, until the maturity of said bonds, from the net earnings of the said road and property, after the payment of all the interest on said bonds, an amount of money equal to the one-half of one per cent. of the principal amount of all such bonds hereby secured, which shall then be outstanding. Such sinking-fund moneys shall, from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds so issued, or in bonds of the Government of the United States or of the State of Illinois; and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added to and paid into the sinking fund, and compounded therein continually, and reinvested, in like manner, with the other money of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured.

That the board of directors of said railway company, party of the first part, shall have entire control over the management of said sinking fund, and every person in charge of, or connected with the same, and shall, from time to time, direct in what bonds or securities it shall be invested, and at what prices or rates, and how it shall be kept, and the manner of keeping the accounts thereof; and shall require ample

security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe keeping.

Every bond of the said issue which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been so absorbed, or otherwise redeemed, by said party of the first part, or until canceled, as hereinafter provided; and the interest on such bonds held by said sinking fund shall be paid by said railroad company regularly, as the interest on its other similar bonds is paid; and such bonds so in the sinking fund shall, as to the annual amount of money to be paid from net earnings into said fund, be regarded as outstanding.

At the annual meeting of the stockholders, in the year 1874, and at each annual meeting thereafter, all bonds of said issue, and the coupons thereon then being in the sinking fund, purchased by said fund as aforesaid, shall be withdrawn from said fund, and canceled, and so certified by the commissioner and treasurer of the company, and the signatures thereto mutilated; and in place thereof, the treasurer of the company shall give to the commissioner a receipt therefor, specifying the same, and such cancellation, which receipt shall be filed in the office
28 of said fund, and shall, semi-annually, draw and entitle said sinking fund to the same amount of interest as the bonds so canceled would have done, and for the same purpose.

It is understood and agreed by and between the parties hereto that no individual liability shall attach to any stockholders of the party of first part in behalf of the holders of any of the bonds secured by this mortgage or deed of trust, and that the holders of said bonds rely solely on the property, rights, and franchises of the party of the first part covered by this mortgage, and the stipulations and covenants of the said party of the first part herein contained, for the payment of the principal and interest of the bonds so held by them.

In witness whereof the said Chicago, Danville and Vincennes Railroad Company, the party of the first part, has caused these presents to be executed, and signed by the president of their company and attested by their secretary, in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, the day and year first above written. And the parties of the second part have hereunto set their hands and affixed their seals the same day and year aforesaid.

CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*
[SEAL.] F. E. JONES, *Secretary.*

Executed in the presence of—
GEORGE P. ANDREWS.
JOHN GARDNER.

W'M R. FOSDICK, [SEAL.]
JAMES D. FISH, [SEAL.]
Trustees.

STATE OF NEW YORK,
City and County of New York, ss:

Before me, the undersigned, a notary public of the State of New York, in the city of New York, duly commissioned and qualified, personally came this day William D. Judson, known to me to be the president of the Chicago, Danville and Vincennes Railroad Company, the party of

the first part in the above deed of trust, and who executed the same on behalf of said company, and acknowledged that the said railroad company, and he, as the president of said company and in its behalf, did sign, seal, and deliver the said indenture and deed of trust, as and for its own act and deed, and for the uses and purposes therein mentioned. Also personally appeared before me, at the same time, the above-named William R. Fosdick and James D. Fish, trustees, and the parties of the second part in the foregoing mortgage and deed of trust, and both personally known to me as the persons who signed the same as such, and each acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this thirtieth day of March, anno Domini 1869.

[NOTARIAL SEAL.] GEORGE P. ANDREWS,
Notary Public, New York City and County.

29 EXHIBIT C.

Articles of consolidation between the Chicago, Danville and Vincennes Railroad Company and the Rossville and Indiana Railroad Company.

Articles of consolidation made, agreed upon, and concluded this fourth day of March, A. D. 1872, between the Chicago, Danville and Vincennes Railroad Company and the Rossville and Indiana Railroad Company, corporations duly incorporated and instituted as such by virtue of the laws of the State of Illinois.

Whereas the roads of the said companies intersect each other in the town of Ross, in the county of Vermillion, at a point on the said Chicago, Danville and Vincennes Railroad distant about six miles southeasterly from the village of Rossville, in said county, and form a continuous line from said point of intersection to the boundary line of the State of Indiana;

And whereas said companies, under their respective charters and the laws of the State of Illinois, are authorized to consolidate their stock and property with each other:

Now, therefore, it is hereby mutually agreed:

First. That from and after the date hereof the stock and property of the said Rossville and Indiana Railroad Company be, and the same is hereby, consolidated with the stock and property of the said Chicago, Danville and Vincennes Railroad Company, and that henceforth the said companies shall constitute but one corporation in the law.

Second. It is mutually agreed that the name of the said consolidated company shall be the Chicago, Danville and Vincennes Railroad Company, by which name it shall act and be described and known, and shall be clothed with all the franchises, power, and privileges conferred upon it by the original charters of said consolidating companies by the acts of the legislature of the State of Illinois authorizing consolidations in this and like cases, and by other laws of the State of Illinois relating to or affecting it.

Third. It is further mutually agreed that the stock in the respective companies shall be deemed and taken to be of equal value; and for every share in the Chicago, Danville and Vincennes Railroad Company, the said consolidated company shall issue to the holders thereof one share in the new or consolidated company, and for every share in the Rossville and Indiana Railroad Company the said consolidated company shall, in like manner, issue to the holder thereof one share of stock in the new company.

Fourth. As a consequence of said consolidation, it is hereby mutually understood and agreed that the consolidated company becomes liable for and assumes all the contracts and liabilities, and is to fulfill, perfect, and discharge all the duties and obligations of each of the consolidated companies.

In witness whereof the parties hereto have caused these presents to be subscribed by their respective presidents and secretaries, and their respective seals to be hereto affixed, the day and year first above written.

CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

[CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY SEAL.]
J. S. CAMPBELL, *Secretary.*

ROSSVILLE & INDIANA RAILROAD COMPANY,
By J. E. YOUNG, *President.*

[ROSSVILLE & INDIANA RAILROAD COMPANY SEAL.]
E. H. JACQUELIN, *Secretary.*

Approved.

A. B. MEEKER,
J. E. YOUNG,
J. S. CAMPBELL,
C. B. MANSFIELD,
C. GREENWOOD,
Directors of the Rossville & Indiana Railroad Company.

Approved.

W. D. JUDSON,
WILLIAM YOUNG,
JA'S W. ELWELL,
MATT. TAYLOR,
JOHN TENNEY,
JAMES D. FISH,
A. GILBERT,
AMOS TENNEY,
N. F. MERRILL,
Directors of the Chicago, Danville & Vincennes Railroad Company.

The consolidation of the property and stock of the two contracting parties named in the foregoing articles of consolidation, in the manner and upon the terms therein contained, has been made and concluded with our consent and by our directions, and we hereby fully approve of and adopt the action of the directors and of the presidents and secretaries of the consolidating companies in executing the said articles and in completing such consolidation.

In witness whereof we, the stockholders in the said respective companies, have hereunto set our hands and seals this fourth day of March, A. D. 1872.

STOCKHOLDERS OF THE ROSSVILLE & INDIANA RAILROAD COMPANY.

J. S. Campbell	5	shares.
A. B. Meeker	5	"
J. H. Wrenn	5	"
W. L. Brown	5	"
Will. G. Stephens	5	"
C. B. Mansfield	1	"
E. H. Jacquelin	1	"
N. W. Jones	1	"

31	C. Greenwood	1	shares.
	M. W. Smith	5	"
J. F. Torrence		5	"
E. Walker		1	"
W. D. Judson		95	"
J. E. Young		200	"
Amos Tenney		100	"
F. E. Jones		1	"
J. W. Wood		1	"
E. E. Lawrence		1	"
J. A. Flowers		1	"
A. N. Hart		1	"
W. B. Ullman		5	"

STOCKHOLDERS OF THE CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY.

William Young	1,740	shares.
F. L. Simons	960	"
N. F. Merrill	2,000	"
H. D. Osborn	1,000	"
Joseph E. Young	5,700	"
W. D. Judson	2,205	"
A. Gilbert	5	"
Ja's W. Elwell	5	"
James D. Fish	5	"
Matt. Taylor	5	"
John Tenney	684	"
Amos Tenney	2,321	"
Edward G. Judson	500	"

I, J. S. Campbell, secretary of the Chicago, Danville and Vincennes Railroad Company, do hereby certify that the foregoing articles of consolidation have been signed by all the directors of said company, and that the same have been satisfied, approved, and confirmed by the written consent of all the stockholders of said company.

Dated March 4th, 1872.

J. S. CAMPBELL,

Secretary of the Chicago, Danville & Vincennes Railroad Company.

[CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY SEAL.]

I, E. A. Jacquelin, secretary of the Rossville and Indiana Railroad Company, do hereby certify that the foregoing articles of consolidation have been signed by all the directors of said company, and that
31*a* the same have been satisfied, approved, and confirmed by the written consent of all the stockholders of said company.

Dated March 4th, 1872.

E. H. JACQUELIN,

Secretary of the Rossville & Indiana Railroad Company.

[ROSSVILLE & INDIANA RAILROAD COMPANY SEAL.]

Filed in the office of the secretary of state of Illinois, at Springfield, Illinois, March 14th, 1872.

Certified copy among company's papers.

NOTE.—The original C., D. & V. R. R. Co. was incorporated by special act of the Illinois legislature, approved February 16th, 1865.

The Rossville & Indiana Railroad Company was organized under the

general laws of Illinois. The articles of association were filed in the office of the secretary of state, at Springfield, February 23d, 1872.

The above consolidation formed C., D. & V. R. R. Co., No. 2.

EXHIBIT D.

Articles of consolidation between the Chicago, Danville & Vincennes Railroad Company and the Western Indiana Railroad Company.

Articles of consolidation made, agreed upon, and concluded this ninth day of March, A. D. 1872, between the Chicago, Danville and Vincennes Railroad Company, a corporation duly incorporated and constituted as such by virtue of the laws of the State of Illinois, and the Western Indiana Railroad Company, a corporation duly organized and existing under the laws of the State of Indiana.

Whereas the said corporations have a common terminus on the line dividing the States of Illinois and Indiana, which has been fixed by said companies by and under their charters, at a point located on the State line, and between the town of Ross, in Vermillion County, Illinois, and the town of Marshfield, in Warren County, Indiana, and distant about ten miles southeasterly from the village of Rossville, in Vermillion County, aforesaid:

And whereas the roads of said companies, as now located, form a continuous line from the city of Chicago, in the State of Illinois, through said point on the State line to Brazil, in Clay County, in the State of Indiana, and are, therefore, under their respective charters, and the laws of the said States of Illinois and Indiana, authorized to consolidate their stock and property with each other:

Now, therefore, it is mutually agreed:

First. That from and after the date hereof the stock and property of the said Chicago, Danville and Vincennes Railroad Company be, and the same is, hereby consolidated with the stock and property of
32 the said Western Indiana Railroad Company, and that henceforth the said companies shall constitute but one corporation in the law.

Second. It is mutually agreed that the name of the said consolidated company shall be the Chicago, Danville and Vincennes Railroad Company, by which name it shall act and be described and known, and shall be clothed with all the franchises, powers, and privileges conferred upon it by the original charter of said consolidating companies by the acts of the legislatures of the said States of Illinois and Indiana, authorizing consolidations in this and like cases, and by other laws of the States of Illinois and Indiana relating to or affecting it.

Third. It is further mutually agreed that the stock of the respective companies shall be deemed and taken to be of equal value; and for every share in the Chicago, Danville & Vincennes Railroad Company the said consolidated company shall issue to the holders thereof one share in the new or consolidated company; and for every share in the Western Indiana Railroad Company the consolidated company shall in like manner issue to the holder thereof one share of stock in the new company.

Fourth. As a consequence of said consolidation, it is hereby mutually understood and agreed that the consolidated company becomes liable for and assumes all the contracts and liabilities, and it is to fulfill, perfect, and discharge all the duties and obligations of each of the consolidated companies.

In witness whereof the parties hereto have caused these presents to be subscribed by their respective presidents and secretaries, and their respective seals to be hereto affixed, the day and year first above written.

[CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY SEAL.]

CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

J. S. CAMPBELL, *Secretary.*

[WESTERN INDIANA RAILROAD COMPANY SEAL.]

WESTERN INDIANA RAILROAD COMPANY,
By E. WALKER, *President.*

N. W. JONES, *Secretary.*

Approved.

W. D. JUDSON,
WILLIAM YOUNG,
JAS. W. ELWELL,
MATT. TAYLOR,
JOHN TENNEY,
JAMES D. FISH,
A. GILBERT,
AMOS TENNEY,
N. T. MERRILL,
Directors of the Chicago, Danville & Vincennes Railroad Company.

Approved.

E. WALKER,
J. E. YOUNG,
C. B. MANSFIELD,
J. S. CAMPBELL,
C. GREENWOOD,
Directors of the Western Indiana Railroad Company.

3 The consolidation of the property and stock of the two contracting parties named in the foregoing articles of consolidation, in the manner and upon the terms therein contained, has been made and concluded with our consent, and by our directions, and we hereby fully approve of and adopt the action of the directors and of the presidents and secretaries of the consolidating companies in executing the said articles, and in completing such consolidation.

In witness whereof we, the stockholders in the said respective companies, have hereunto set our hands and seals, this ninth day of March, A. D. 1873.

STOCKHOLDERS OF THE WESTERN INDIANA RAILROAD COMPANY.

J. S. Campbell	5 shares.
E. Greenwood	5 "
C. B. Mansfield	5 "
E. H. Jacquelin	5 "
W. D. Judson	20 "
A. B. Meeker	5 "
J. H. Wrenn	5 "
Will. G. Stephens	5 "
E. D. C. Overman	5 "
R. M. Clinnie	5 "

E. Walker	5 shares.
R. Biddle Roberts	5 "
J. E. Young	400 "
Amos Tenney	20 "

STOCKHOLDERS OF THE CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY.

J. H. Wrenn	5 shares.
W. G. Stephens	5 "
M. W. Smith	5 "
W. L. Brown	5 "
E. Walker	1 share.
F. E. Jones	1 "
J. W. Wood	1 "
E. E. Lawrence	1 "
J. A. Flowers	1 "
C. B. Mansfield	1 "
E. H. Jacquelin	1 "
N. W. Jones	1 "
A. B. Meeker	5 shares.
J. T. Torrence	5 "
34 C. Greenwood	1 share.
W'm Young	1,740 shares.
F. L. Simons	960 "
N. F. Merrill	2,000 "
A. N. Hart	1 share.
W. S. Osborne	1,000 shares.
Joseph E. Young	5,700 "
W. D. Judson	2,205 "
A. Gilbert	5 "
W. B. Ullmann	5 "
Ja's W. Elwell	5 "
James D. Fish	5 "
Matt. Taylor	5 "
John Tenney	684 "
Amos Tenney	2,321 "
Edward G. Judson	500 "

I, J. S. Campbell, secretary of the Chicago, Danville and Vincennes Railroad Company, do hereby certify that the foregoing articles of consolidation have been signed by the president and all the directors of said company; that the same have been ratified, approved, and confirmed by the within written consent of all the stockholders of said company.

Dated March 9th, 1872.

J. S. CAMPBELL,
Secretary of the Chicago, Danville and Vincennes Railroad Company.

(CHICAGO, DANVILLE AND VINCENNES)
(RAILROAD COMPANY SEAL.)

I, N. W. Jones, secretary of the Western Indiana Railroad Company, do hereby certify that the foregoing articles of consolidation have been signed by the president and all the directors of said company, and that

the same has been ratified, approved, and confirmed by the written consent of all the stockholders of said company.

Dated March 9th, A. D. 1872.

N. W. JONES,
Secretary of the Western Indiana Railroad Company.

{ WESTERN INDIANA RAILROAD }
{ COMPANY SEAL. }

Filed in office secretary of state of Indiana, Indianapolis, March 14th, 1872.

Filed in office secretary of state of Illinois, Springfield, March , 1872.

Certified copies among company's papers.

NOTE.—The Western Indiana Railroad Company was organized under the general laws of Indiana.

35 The articles of association were filed in the office of the secretary of state, at Indianapolis, March 8th, 1872.

The above consolidation formed C., D. & V. R. R. Co. No. 3.

EXHIBIT E.

Articles of consolidation between the Chicago, Danville and Vincennes Railroad Company and the Attica and Terre Haute Railroad Company.

Articles of consolidation, made and agreed upon, and concluded this sixth day of May, A. D. 1872, between the Chicago, Danville and Vincennes Railroad Company, a corporation, duly incorporated, and constituted as such, by virtue of the laws of the States of Illinois and Indiana, and the Attica and Terre Haute Railroad Company, a corporation duly organized and existing under the laws of the State of Indiana.

Whereas the roads of said companies, as now located, intersect, join, and unite with each other by continuous lines, and they are, therefore, under their respective charters, and the laws of the States of Illinois and Indiana, authorized to consolidate their stock and property with each other;

And whereas, by a resolution of the board of directors of the Chicago, Danville and Vincennes Railroad Company, adopted at a meeting of said board held on the 11th day of April, 1872, and by a like resolution of the board of directors of the Attica and Terre Haute Railroad Company, adopted at a meeting of said board held on the first day of April, 1872, the terms and provisions embraced in this contract were submitted and recommended to the stockholders of their respective companies, as terms suitable and proper upon which to consolidate the stock and property of the said two companies with each other, which terms and provisions have been adopted by the consent and vote of the majority of the stockholders of the respective companies at meetings thereof duly called and held, and at which meetings a majority of the stock of the said respective companies was represented;

And whereas, by resolutions of the boards of directors of the respective companies, and by the vote of the stockholders of said companies, respectively, the presidents and secretaries of the said respective companies have been authorized and directed to cause to be prepared, and in behalf of, and under the seals of, their respective companies, to execute articles of consolidation, upon the terms herein contained;

Now, therefore, it is mutually agreed:

First. That from and after the date hereof the stock and prop-
36 erty of the said Chicago, Danville and Vincennes Railroad Company be, and the same is hereby, consolidated with the stock and property of the said Attica and Terre Haute Railroad Company, and that henceforth the said companies shall constitute but one corporation in the law.

Second. It is also mutually agreed that the name of the consolidated company shall be the Chicago, Danville and Vincennes Railroad Company, by which name it shall act and be described and known, and shall be clothed with all the franchises, powers, and privileges conferred upon it by the original charters of said consolidating companies by the acts of the legislatures of the said States of Illinois and Indiana authorizing consolidations in this and like cases, and by the laws of the States of Illinois and Indiana relating to or affecting it.

Third. It is further mutually agreed that the stock in the respective companies shall be deemed and taken to be of equal value, and for every share in the Chicago, Danville and Vincennes Railroad Company, the said consolidated company shall issue to the holders thereof one share in the new or consolidated company; and for every share in the Attica and Terre Haute Railroad Company the consolidated company shall in like manner issue to the holders thereof one share of stock in the new company; provided, however, that all such stock shall be subject to the payments of such installments thereupon as may be unpaid at the time of this consolidation.

Fourth. There shall be nine directors to manage the affairs of the company, and their names are, James W. Elwell, James D. Fish, William D. Judson, Amos Tenney, Mathew Taylor, N. F. Merrill, John Tenney, George Nebeker, and Alvin Gilbert, who shall hold and discharge the duties of such office until a new board shall be elected.

Fifth. As a consequence of said consolidation, it is hereby mutually understood and agreed that the consolidated company, or the new Chicago, Danville and Vincennes Railroad Company, becomes liable for, and assumes all the contracts and liabilities, and is to fulfill, perfect, and discharge all the duties and obligations of each of the consolidated companies.

In witness whereof the parties hereto have caused these presents to be subscribed by their respective presidents and secretaries, and their respective seals to be hereto affixed, the day and year first above written.

[SEAL.] CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

J. S. CAMPBELL, *Secretary.*

[SEAL.] ATTICA AND TERRE HAUTE RAILROAD COMPANY,
By GEO. NEBEKER, *President.*

H. A. FREY, *Secretary.*

37 I, J. S. Campbell, secretary of the Chicago, Danville and Vincennes Railroad Company, do hereby certify that the foregoing articles of consolidation have been ratified, approved, and confirmed, by a vote of a majority of the stockholders of said company, at a special meeting of said stockholders, held at the office of said company, in the city of Chicago, Illinois, on the 30th day of April, 1872.

In witness whereof I have hereunto set my hand and affixed the seal of the said company, at Chicago, Illinois, this sixth day of May, A. D. 1872.

[SEAL.] J. S. CAMPBELL, *Secretary.*

I, H. A. Frey, secretary of the Attica and Terre Haute Railroad Company, do hereby certify that the foregoing articles of consolidation have been ratified, approved, and confirmed by a vote of a majority of the stockholders of said company, at a special meeting of said stockholders, held at the office of said company, at Covington, Indiana, on the 13th day of April, A. D. 1872.

In witness whereof I have hereunto set my hand and affixed the seal of the said company, at Covington, Indiana, this sixth day of May, A. D. 1872.

[SEAL.] H. A. FREY, *Secretary.*

We, the undersigned, do hereby certify that the within and foregoing is a true copy of the articles of consolidation of the Chicago, Danville and Vincennes Railroad Company, and of the Attica and Terre Haute Railroad Company, and of the whole of said articles.

Witness our hands and the seals of said companies, this sixth day of May, A. D. 1872.

[SEAL.] W. D. JUDSON,
President of the Chicago, Danville and Vincennes Railroad Company.
[SEAL.] GEORGE NEBEKER,
President of the Attica and Terre Haute Railroad Company.

Certificates.

STATE OF INDIANA,
Office of Secretary of State.

I, John H. Farquhar, secretary of state of the State of Indiana, do hereby certify that I have compared the within and foregoing with the articles of consolidation between the Chicago, Danville and Vincennes Railroad Company, and the Attica and Terre Haute Railroad Company, filed in the office of secretary of state of the State aforesaid, on the 11th day of May, A. D. 1872, as appeared from date of filing, endorsed thereon, and that it is a full, true, and complete transcript therefrom, and of the whole of said articles of consolidation.

In witness whereof I have hereunto set my hand and affixed the seal of the State, at the city of Indianapolis, this 13th day of May, A. D. 1872.

[SEAL.] JOHN H. FARQUHAR,
Secretary of State,
By I. M. EDDY, *Deputy.*

37*a* Filed in the office of the secretary of state of Illinois, at Springfield, May 10th, 1872.

NOTE.—The Attica and Terre Haute R. R. Co. was organized under the general laws of Indiana. Do not know date of filing of articles of association.

The above consolidation formed C., D. & V. R. R. Co. No. 4, which is the present company.

W. D. J.

November 30th, 1874.

EXHIBIT F.

Form of mortgage.

This indenture, made this twelfth day of March, in the year one thou-

sand eight hundred and seventy-two, between the Chicago, Danville and Vincennes Railroad Company, a corporation of the States of Illinois and Indiana, party of the first part, and William R. Fosdick and James D. Fish, of the city and State of New York, trustees, upon certain trusts herein after specified and provided, the party of the second part:

Whereas the Chicago, Danville and Vincennes Railroad Company, a corporation of the States of Illinois and Indiana, under and in pursuance of the provisions of the acts incorporating the same, has commenced to construct and put in operation that division of its railroad situate, lying, and being in the State of Indiana, commencing on the boundary line between said States of Illinois and Indiana, in the township of Marshfield and county of Warren, in the State of Indiana, at the point where it connects with the road of said party of the first part, terminating on the eastern boundary-line of the State of Illinois, in the town of Ross, in Vermillion County, in said last-named State, and distant about ten miles southeasterly from the village of Rossville, extending thence in a southeasterly direction to Covington, in Fountain County; thence southerly to Montezuma, in Parke County, and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad; also, a branch road, extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to the village of Newburg, in said county, and is now engaged in constructing the same;

And, for the purpose aforesaid, needs and has resolved to purchase and transport iron rails, chairs, spikes, and other iron and materials necessary therefor, and engines, cars, and other rolling-stock and machinery to be used thereon, and to borrow a portion of the money necessary to make such purchases and to pay for such transportation, and the construction, completion, and equipment of said road;

And whereas at a meeting of the board of directors of the said
38 Chicago, Danville and Vincennes Railroad Company, the party of the first part, held pursuant to law, on the eleventh day of March, in the year 1872, the said board of directors resolved and enacted an order and resolutions as follows, to wit:

"Resolved, That, to aid in providing the means required for the construction and equipment of that division of this company's road situate, lying, and being in the State of Indiana, an issue of bonds shall be made by the company, amounting to one million and five hundred thousand dollars, each bond to be for the sum of $1,000, and to bear seven per cent. per annum interest, payable semi-annually, on the first days of April and October in each year, and the principal to be payable on the first day of April, 1912, and both principal and interest to be payable in United States gold coin, in the city of New York; and each bond to contain an express waiver of all recourse by the holder of the same to any individual liability of the stockholders of this company.

"That said bonds shall be dated as made on the twelfth day of March, A. D. 1872.

"In case default be made in the payment of any half year's interest on any of said bonds, and the warrant for said interest shall have been presented and its payment demanded, and such default shall have continued for six months after such demand, without the consent of the holder of said coupon or bond, then and thereupon the principal of all such bonds shall become immediately due and payable. That a warrant for each semi-annual payment of interest shall be made and authenti-

cated for and on behalf of this company by the secretary of this company and annexed to each bond. That said bonds shall be prepared by the president of the company, and signed by him for and on behalf of this company, and attested by the treasurer, and shall have annexed to them a certificate of authentication of the trustee or trustees under the mortgage made to secure them, and shall not be issued or obligatory without such certificate.

"That from and after the first day of April, A. D. 1876, and until the maturity of said bonds, there shall be annually created, paid, and deposited with a sinking-fund commissioner or commissioners, to be appointed by the board of directors, and to hold office at the pleasure of the board, a sinking-fund, to aid in the final redemption of said bonds, of an amount of money derived from the net earnings of said road and property, equal to one-half of one per cent. on the whole amount of said issue of bonds at the time of any such payment outstanding. Said fund, and all investments and accounts thereof, and its management, shall always be under the control of this board, and shall be from time to time continually invested by the commissioner or commissioners in the purchase of said bonds or bonds of the Government of the United States or of the States of Illinois and Indiana; and the interest on all such investments, as collected, shall be added to and continually compounded with
39 said fund, and the same shall be used and appropriated solely to redeem and eventually pay off said issue of bonds hereby provided to be made.

"No bond of said issue purchased by said fund shall thereby be canceled, but shall, with its coupons, be stamped as owned by said sinking-fund, and it, or its amount if destroyed, shall remain a liability against the company, and the interest shall be paid to the said sinking-fund the same as paid on other bonds, and shall be added to said fund, until the whole of said issue of bonds shall have been absorbed or otherwise paid off, when the whole issue shall be canceled. Any bonds of said issue which may be in said sinking-fund at any time may be destroyed by order of the board of directors of said company; but in such case the semi-annually accruing interest on the amount so destroyed must thereafter be paid to said sinking-fund. The bonds and securities belonging to the sinking-fund shall be kept in the office of the sinking-fund commissioner or commissioners, which shall be at or near the principal office of said railroad company.

"That for the purpose of securing the final payment of said issue of $1,500,000 of bonds, with all interest to accrue thereon, this company will make and deliver to William R. Fosdick and James D. Fish, as trustees, a mortgage and deed of trust, conveying to said persons as trustees, for the benefit of every holder of such bonds, or any of them, all that division of the road of this company situate, lying, and being in the State of Indiana, commencing on the boundary-line between the States of Illinois and Indiana, and in the township of Marshfield, and county of Warren, in the State of Indiana, at the point where it connects with the road of this company, terminating on the eastern boundary-line of the State of Illinois, in the town of Ross, in Vermil'ion County, in said last-named State, and distant about ten miles southeasterly from the village of Rossville; extending thence in a southeasterly direction to Covington, in Fountain County; thence southerly to Montezuma, in Park County; and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad; also, a branch road, extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington,

in Fountain County, and extending in an easterly direction to the village of Newburg, in said county, the entire length of road being about eighty miles; and also all such additional branch roads as this company may hereafter construct for the purpose of extending its tracks into the coal and mining regions in the vicinity of its said main lines of road, with all the property, rights, and franchises of this company of every kind and description whatever, pertinent to said road between said terminal points, and all the income to be had and derived from operating the same, in trust, to secure the final payment of said bonds as aforesaid, with all the rights, covenants, powers, and authority, in case default be made by this company in such payments as in said deed of trust
40 shall be specified, to foreclose said mortgage, and to sell the property so mortgaged, or to take possession of and operate the same, and receive the incomes thereof; but not in any case, before any default, to disturb or interfere with this company in the possession, control, and management thereof, or from receiving the incomes thereof, or from selling or exchanging any of the personal property, or machinery, or equipments thereof, or any of the lands or real estate, not necessary for t use and operation of the railroad; as to all of which, as will be in said mortgage and deed of trust specifically stated, agreed upon, and set forth.

"That the president of this company is hereby authorized and fully empowered to make and sign, and execute, and seal with the corporate seal of this company, the said mortgage and deed of trust, and to acknowledge the same for and on behalf of this company for record; and on the acceptance of said trust, and signing the said deed by the said trustees, to cause the same to be recorded according to law, and thereupon to make, sign, execute, and prepare said $1,500,000 of bonds for issue and sale, as shall be hereafter ordered by this board."

And whereas the said Chicago, Danville and Vincennes Railroad Company, party of the first part, hath, in accordance with the provisions of said order and resolution, made and executed bonds to the amount of one million and five hundred thousand dollars, of the form, denomination, and character prescribed by said order and resolution, and hold the same to be authenticated, issued, used, and disposed of for the purposes in said order and resolution stated:

Now, therefore, in further pursuance of said order and resolution, and to the end and purpose of securing and assuring the punctual payment of said one million and five hundred thousand dollars of bonds, and every part thereof which may be issued, to the persons who may become the holders of the same, or any of them:

This indenture witnesseth that the said Chicago, Danville and Vincennes Railroad Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of the second part, trustees as aforesaid, at and before the ensealing hereof, the payment of which is hereby acknowledged, doth hereby grant, bargain, sell, enfeoff, release, assign, and convey unto the said William R. Fosdick and James D. Fish, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire railroad of the party of the first part, situate, lying, and being in the State of Indiana, commencing on the boundary-line between the States of Illinois and Indiana, in the township of Marshfield, and county of Warren, in the State of Indiana, at the point where it connects with the road of the party of the first part, terminating on the eastern boundary-line of the State of
41 Illinois, in the town of Ross, in Vermilion County, in said last-

named State, and distant about ten miles southeasterly from the village of Rossville, extending thence in a southeasterly direction to Covington, in Fountain County; thence southerly to Montezuma, in Parke County, and thence southeasterly, to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad; also, a branch road, extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easte'ly direction to the village of Newburgh, in said county, the entire length of road being about eighty miles; and also all such additional branch roads as said party of the first part may hereafter construct, for the purpose of extending its tracks into the coal and mining regions in the vicinity of said main lines of road; with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said party of the first part now has, or owns and possesses, or may hereafter acquire, either in law or equity, of every kind whatever, pertinent thereto.

Provided, however, that this grant and conveyance aforesaid shall not include nor operate to transfer any lands, goods, chattels, property, machinery, equipment, or other matters, which said company now owns, or may hereafter acquire, that need not be used for any purpose incident to the management or operation of said railway, or the repair thereof, or in the business of said railway company; nor any franchises, power, or corporate right to build that portion of the line of railroad which, by its charter, it is authorized to locate and construct, and not embraced within the terminal points hereinbefore described; but all which last mentioned franchises and right of way shall be wholly excepted and exempt from these presents and the grant and conveyance herein specified; nor shall these presents, in any way, prohibit the party of the first part from selling and conveying or otherwise disposing of the same, and all the proceeds thereof; nor from receiving, using, and applying any money or personal property of said company to the repairs of said road or its appurtenances, or to its current expenses, or to the purchase of necessary machinery, or the renewal thereof; and the board of directors of said company may likewise distribute and pay any net annual incomes and profits to stockholders, after paying the interest on the said bonds, and providing for any sinking fund required to be created and kept: To have and to hold the said railway property, premises, interests, rights, and appurtenances mentioned as aforesaid, and hereby conveyed, or intended so to be, by this conveyance, unto the said
42 party of the second part, as such trustees as aforesaid, and to their successors in said trust, or assigns, to and for the only use, benefit, and behoof of the said trustees, and their cestui que trust, their successors and assigns, forever; but in special trust and confidence, and upon the conditions following, that is to say:

1st. That this conveyance is for, and shall be by the said party of the second part, their successors and assigns, held, used, and owned solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds about to be issued as aforesaid, by the party of the first part, and for enforcing the stipulations of said company as to said issue of bonds, and the disposal thereof, and secur-

ing the same, and the final payment thereof, in their true intent and meaning, whether contained in said bonds, or the interest warrants attached to them, or in this deed.

2d. That for the better assuring and confirming the title and powers of the said party of the second part, their successors and assigns, in the said premises and property hereby conveyed, and in and to any premises and property or rights hereafter accruing, or to be acquired by said party of the first part, appurtenant to said railroad, which is intended to pass or be passed by this conveyance, the said party of the first part, their successors and assigns, will and shall, as often as may be lawfully required by the party of the second part, or their successors or assigns, holding the above-granted trust, do such acts, and make such other and further conveyances and assurances in law as such party of the second part shall, by counsel learned in the law, be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

3d. That if the said party of the first part, their successors or assigns, shall well and truly pay to the holders of said one million and five hundred thousand dollars of bonds, so to be issued and hereby secured, the respective sums of money and interest due and accruing on said bonds on the days and times therein mentioned, and according to the tenor and effect of said bonds, then and thenceforth this indenture, and all the estate hereby granted, shall become and be utterly void and of no further effect; and the same shall be, by such payment, wholly annulled and satisfied, without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part or their successors.

4th. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate the said railroad, property and franchises and appurtenances, and to renew, replace, and repair the same, and
43 every part thereof, and take and receive and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

5th. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued or to be issued, according to the tenor of the coupons thereto annexed, or of the provisions hereof; or in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bond on which such default shall occur, the said party of the first part hereby covenants and agrees to and with the party of the second part, and their successors and assigns, that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to him or them, or to their agent, the actual possession of the herein granted and demised railroad and premises, together with all the books, records, papers, accounts, and money of said company, and all management and control thereof; and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the income and profits thereof; and if said property shall, after such taking possession thereof, be sold, then from the sale thereof; or such

expenses may be paid from the sale of any personal property, as the said trustees may deem proper; and that said party of the second part, and their successors, having taking such possession, may manage, operate, and control said road and property and all of its affairs, and appoint all needful agents and employees for that purpose, and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payment of the said interest so in default, according to the true intent and tenor of the said bonds and the coupons annexed and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same—first paying all expenses of such possession and management, and all taxes, assessments, and charges on said property, and a just compensation for their own services as such trustees. But in any and all cases of such taking of possession by said party of the second part, and paying up any such default, and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money and accounts into the possession of the party of the first part; provided, that no such demand for such possession shall be made by said trustee or trustees until they shall have been required by the holders of at least the one-half of all of the said issue of bonds which shall then be unpaid and outstanding to make such demand, and to take such possession of said road and property.

6th. That in case default shall be made as aforesaid, and shall continue as aforesaid, it shall be lawful for the party of the second part, or their successors in said trust, after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of, to the highest bidder, all and singular the premises hereby conveyed, or intended so to be, as an entirety, at public auction, in the city of Indianapolis, State of Indiana, at such time as said party of the second part may appoint, first having demanded of the party of the first part full payment of all money then in default, and also first having given sixty days' notice of such time and place of sale, and a full description of the property so to be sold, by advertisement thereof in two newspapers; one published in Indianapolis, in the State of Indiana, and one published in the city of New York; and to adjourn said sale from time to time, in their discretion, and, if adjourned, to make such sale in manner aforesaid, without further notice, at the time and place to which it may be so adjourned; and upon such sale, and receiving the purchase money therefor, to convey the same, by good and sufficient conveyances, to the purchaser or purchasers; and such sale and conveyance so made shall convey all the right, title, estate, interest, and property of the said party of the first part, of, in, and to the said road, premises, franchises, and property to the said purchaser, in fee-simple, forever; and shall be a perpetual bar, both in law and equity, against the said party of the first part, and their successors and assigns, and against all and every person claiming or to claim the said premises, or any part thereof, under them, forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities which may have been made or incurred by the party of the second part in operating and controlling and maintaining the said railroad and property, and in managing its business and affairs while in possession, and all payments for taxes, charges, and assessments on said premises, or any part thereof, as well as reasonable compensation for their own services, to apply the proceeds of such sale to the payment of the interest of said one million and five hundred thousand dollars of bonds, or so many of them as shall have been issued

by said party of the first part, and be then outstanding, pro rata, until all such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds, pro rata, until such principal shall be paid; and if any surplus remain after paying all of said matters, to pay such surplus to the party of the first part; and such payments shall be so made on said bonds, whether the same shall have become due or not at the time of such sale: Provided, That said trustee or trustees may, in their discretion, sell the said premises as an entirety, and in doing so shall make legal distribution of the proceeds of such sale accordingly.

It is hereby declared that the receipt of said trustee or trustees making any such sale to the purchaser of the premises for the purchase-money shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not, after payment of said purchase-money, and obtaining such receipt therefor, be liable, or in any way bound, to see said purchase-money applied to this trust, or otherwise, or in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

7th. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents, or by judicial authority, the said trustee or trustees may bid for and purchase, or cause to be purchased, the property so sold or any part of it, in behalf of the holders of said bonds secured by this deed then outstanding, at a reasonable price if only a part be sold; but if the whole property be sold, at a price not exceeding the whole amount of said bonds and interest then outstanding.

8th. If default be made by the party of the first part in the payment of any half-year's interest on any of said bonds and the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding; and the said party of the second part may so declare the same, and notify the party of the first part thereof, and upon the written request of the holders of the majority of the said bonds then outstanding shall proceed to collect both principal and interest of all such bonds outstanding, by foreclosure and sale of said property, or otherwise, as herein provided.

9th. It is hereby mutually agreed by the parties hereto that the trustees shall be responsible only for gross negligence and willful default, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly and satisfactorily indemnified against the same by one or more of said bondholders.

In case of the death, resignation, or inability to act of any trustee, the board of directors may appoint a successor, and failing to so appoint, any court of competent jurisdiction may appoint a trustee to fill such vacancy on the application of the holders of the one-sixth part of the bonds hereby intended to be secured then outstanding, and such appointment by the board or by such court shall invest the trustee so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

And the said party of the first part hereby further covenants and agrees with the party of the second part and their successors, and with the holders of each and all of the said issue of one million and five hun-

dred thousand dollars of bonds which may be issued, that the said party of the first part will create and make a sinking fund for the re-
46 demption of such bonds and each of them, by setting aside and depositing with a sinking-fund commissioner or commissioners, to be appointed by the party of the first part for that purpose, from and after the first day of April, in the year 1876, and annually thereafter until the maturity of said bonds, from the net earnings of the said road and property, after the payment of all the interest on said bonds, an amount of money equal to the one-half of one per cent. of the principal amount of all such bonds hereby secured which shall then be outstanding. Such sinking-fund moneys shall from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds so issued, or in bonds of the Government of the United States or of the States of Illinois and Indiana, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added to and paid into the sinking fund, and compounded therein continually, and reinvested, in like manner with the other money of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured.

That the board of directors of said railway company, party of the first part, shall have entire control over the management of said sinking fund, and every person in charge of or connected with the same, and shall, from time to time, direct in what bonds or securities it shall be invested, and at what prices or rates, and how it shall be kept, and the manner of keeping the accounts thereof; and shall require ample security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe-keeping.

Every bond of the said issue which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been so absorbed, or otherwise redeemed, by said party of the first part, or until canceled, as hereinafter provided; and the interest on such bonds held by said sinking fund shall be paid by said railroad company regularly, as the interest on its other similar bonds is paid; and such bonds so in the sinking fund shall, as to the annual amount of money to be paid from net earnings into said fund, be regarded as outstanding.

At the annual meeting of the stockholders, in the year 1877, and at each annual meeting thereafter, all bonds of said issue, and the coupons thereon then being in the sinking fund, purchased by said fund as aforesaid, shall be withdrawn from said fund, and canceled, and so certified by the commissioner and treasurer of the company, and the signatures thereto mutilated; and in place thereof the treasurer of the company shall give to the commissioner a receipt therefor, specifying the same, and such cancellation; which receipt shall be filed in the office of said fund, and shall, semi-annually, draw and entitle said sinking fund to the same amount of interest as the bonds so canceled would have done, and for the same purposes.

47 It is understood and agreed by and between the parties hereto that no individual liability shall attach to any stockholders of the party of the first part in behalf of the holders of any of the bonds secured by this mortgage or deed of trust, and that the holders of said bonds rely solely on the property, rights, and franchises of the party of the first part covered by this mortgage, and the stipulations and covenants of the said party of the first part herein contained, for the payment of the principal and interest of the bonds so held by them.

In witness whereof the said Chicago, Danville and Vincennes Rail-

road Company, the party of the first part, has caused these presents to be executed and signed by the president of their company, and attested by their secretary, in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, the day and year first above written. And the parties of the second part have hereunto set their hands and affixed their seals, the same day and year aforesaid.

CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

Executed in presence of—
RICH'D N. WHITLOCK,
H. A. GILDERSLEEVE.

[SEAL.] J. S. CAMPBELL, *Secretary.*

W'M R. FOSDICK, [SEAL.]
JAMES D. FISH, [SEAL.]
Trustees.

STATE OF NEW YORK,
City and County of New York, ss:

Before me, the undersigned, a notary public of the State of New York, in the city of New York, duly commissioned and qualified, came this day, William D. Judson, to me personally known, and also known by me to be the president of the Chicago, Danville and Vincennes Railroad Company, the party of the first part in the above deed of trust, and who executed the same on behalf of said company, and acknowledged that the said railroad company, and he, as the president of said company, and in its behalf, did sign, seal, and deliver the said indenture and deed of trust, as and for its own act and deed, and for the uses and purposes therein mentioned. Also personally appeared before me, at the same time, the above-named William R. Fosdick, one of the trustees, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this thirteenth day of March, anno Domini 1872.

[SEAL.] H. A. GILDERSLEEVE,
Notary Public, New York City and County.

48 STATE OF ILLINOIS,
County of Cook, ss:

Before me, the undersigned, a notary public of the State of Illinois, in the county of Cook, in the city of Chicago, duly commissioned and qualified, came James D. Fish, to me personally known, and one of the trustees, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowlodgrd that he did sign, seal, and execute the same, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 15th day of March, anno Domini 1872.

[SEAL.] JOHN B. ADAMS,
Notary Public, in the City of Chicago and County of Cook.

49 EXHIBIT G.

Consolidated mortgage.

This indenture, made this twenty-fourth day of April, in the year one thousand eight hundred and seventy-two, between the Chicago, Danville and Vincennes Railroad Company, a corporation of the States of Illinois and Indiana, party of the first part, and William R. Fosdick and James D. Fish, of the city and State of New York, trustees, upon certain trusts hereinafter specified and provided, the party of the second part.

Whereas the Chicago, Danville and Vincennes Railroad Company has heretofore issued, sold, and disposed of two thousand and five hundred of its first-mortgage bonds, of one thousand dollars each, numbered from number one (1) to two thousand and five hundred (2,500), both inclusive, amounting in the aggregate to two millions and five hundred thousand dollars, which bonds are dated the tenth day of March, A. D. 1869, are due and payable on the first day of April, A. D. 1909, with semi-annual interest coupons attached thereto, payable on the first days of April and October in each year, until the maturity of said bonds, and both principal and interest payable in United States gold coin, and all of which bonds are now outstanding and unpaid;

And whereas said corporation, in order to secure the payment of the principal and interest of the said two millions and five hundred thousand dollars of bonds, did, under date of the tenth day of March, A. D. 1869, aforesaid, make and execute a certain mortgage or deed of trust to William R. Fosdick and James D. Fish, trustees, conveying to them, as said trustees, that division of the road of said corporation, situate, lying and being in the counties of Cook, Will, Kankakee, Iroquois, and Vermilion, in the State of Illinois, together with certain other property of said corporation, reference being had to the mortgage or deed of trust aforesaid, which is recorded in the several counties mentioned therein, for a more full description of the premises and property so conveyed, and embraced in said deed of trust, and for all other and further provisions contained therein;

And whereas the Chicago, Danville and Vincennes Railroad Company have made and executed certain other of its first-mortgage bonds, of one thousand dollars each, numbered from number two thousand five hundred and one (2,501) to four thousand (4,000), both inclusive, amounting in the aggregate to one million and five hundred thousand dollars, which bonds are dated on the 12th day of March, A. D. 1872, are due and payable on the first day of April, A. D. 1912, with semi-annual interest coupons attached thereto, payable on the first days of April and October in each year, until the maturity of said bonds,
50 and both principal and interest payable in United States gold coin, and which bonds said company are now about to sell and dispose of for the purpose of providing a portion of the means required for the construction and equipment of that division of its road situate in the State of Indiana;

And whereas said corporation, in order to secure the payment of the principal and interest of said last-mentioned one million and five hundred thousand dollars of bonds, did, under date of the twelfth day of March, A. D. 1872, aforesaid, make and execute a certain other mortgage or deed of trust to William R. Fosdick and James D. Fish, trustees, conveying to them, as said trustees, that division of the road of said corporation, situate, lying and being in the counties of Warren, Fountain, Parke, and Clay, in the State of Indiana, together with certain other

property of said corporation, reference being had to the mortgage or deed of trust aforesaid, which is recorded in the several counties mentioned therein, for a more full description of the premises and property so conveyed and embraced in said deed of trust, and for all other and further provisions contained therein:

Now, for the purpose of more fully securing and assuring the punctual payment of the said two millions and five hundred thousand dollars of bonds, before mentioned, numbered from number 1 to number 2,500, both inclusive, and dated the tenth day of March, A. D. 1869, and due and payable on the first day of April, A. D. 1909, and every part thereof, and the interest thereon, to the persons who may become the holders of the same, or any of them:

This indenture witnesseth that the said Chicago, Danville and Vincennes Railroad Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of the second part, trustees as aforesaid, at and before the ensealing hereof, the payment of which is hereby acknowledged, in addition to the conveyance made by it to said party of the second part, by the indenture aforesaid, dated March 10, A. D. 1869, doth hereby grant, bargain, sell, enfeoff, release, assign and convey unto the said William R. Fosdick and James D. Fish, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire division of the railroad of the party of the first part, situate, lying and being in the State of Indiana, commencing on the boundary-line between the States of Illinois and Indiana, in the township of Marshfield and county of Warren, in the State of Indiana, at the point where it connects with the road of the party of the first part, terminating on the eastern boundary-line of the State of Illinois, in the town of Ross, in Vermilion County, in said last-named State, and distant about ten miles southeasterly from the village of Rossville, extending thence in a southeasterly direction to Covington, in Fountain County; thence southerly, to Montezuma, in Parke County, and thence southeasterly, to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad. Also, a branch road extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to
51 the village of Newburg, in said county, the entire length of road being about eighty miles; and also all such additional branch roads as said party of the first part may hereafter construct in the State of Indiana, for the purpose of extending its tracts into the coal and mining regions in the vicinity of said main lines of road; with all its franchises, equipments, property, tolls, issues and profits, and all its lands, tenements, buildings, fixtures, machinery, goods and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing and erections, and all its rights of way and easements, and all cars, engines and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said party of the first part now has or owns and possesses, or may hereafter acquire, either in law or equity, of every kind whatever pertinent thereto.

To have and to hold the said railway property, premises, interests, rights, and appurtenances mentioned as aforesaid, and hereby conveyed, or intended so to be, by this conveyance, unto the said party of the second part, as such trustees as aforesaid, and to their successors in said

trust, or assigns, to and for the only use, benefit, and behoof of the said trustees, and their cestui que trust, their successors and assigns, forever; subject, however, to the prior lien provided for in a certain mort'age or deed of trust made by the party of the first part hereto to the party of the second part hereto, dated March 12th, 1872, to secure one million and five hundred thousand dollars of bonds, to be issued by the party of the first part, and hereinbefore referred to.

And for the purpose of more fully securing and assuring the punctual payment of the said one million and five hundred thousand dollars of bonds before mentioned, numbered from number 2501 to number 4000, both inclusive, and dated the 12th day of March, A. D. 1872, and due and payable on the first day of April, A. D. 1912, and every part thereof, and the interest thereon, to the persons who may become the holders of the same, or any of them.

This indenture further witnesseth that the said Chicago, Danville and Vincennes Railroad Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of the second part, trustees as aforesaid, at and before the ensealing hereof, the payment of which is hereby acknowledged, in addition to the conveyance made by it to said party of the second part by the indenture aforesaid, dated March 12th, A. D. 1872, doth hereby grant, bargain, sell, enfeoff, release, assign, and convey unto the said William R. Fosdick and James D. Fish, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire railroad of the party of the first part, lying, being, and extending from its terminus, in the city of Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermilion, to the city of Danville, being in length about one hundred and thirty miles, with all its franchises,
52 equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions, of every nature and kind whatever, including all the property between said terminal points which said party of the first part now has or owns and possesses, or may hereafter acquire, either in law or equity, of every kind whatever pertinent thereto: To have and to hold the said railway property, premises, interests, rights, and appurtenances mentioned as aforesaid, and hereby conveyed, or intended so to be, by this conveyance, unto the said party of the second part, as such trustees aforesaid, and to their successors in said trust, or assigns, to and for the only use, benefit, and behoof of the said trustees, and their cestui que trust, their successors and assigns, forever; subject, however, to a prior lien provided for in a certain mortgage or deed of trust made by the party of the first part hereto to the party of the second part hereto, dated March 10th, A. D. 1869, to secure two millions and five hundred thousand dollars of bonds issued by the party of the first part, and hereinbefore referred to.

It is provided, however, that the grants and conveyances hereinbefore contained shall not include, nor operate to transfer, any lands, goods, chattels, property, machinery, equipment, or other matters which said company now owns, or may hereafter acquire, that need not be used for any purpose incident to the management or operation of said railway, or the repair thereof, or in the business of said railway company; nor any franchises, power, or corporate right to build that

portion of the line of railroad which by its charter it is authorized to locate and construct, and not embraced within the terminal points herein-before described; but all which last-mentioned franchises and right of way shall be wholly excepted and exempt from these presents and the grant and conveyance herein specified; nor shall these presents in any way prohibit the party of the first part from selling and conveying, or otherwise disposing of the same, and all the proceeds thereof; nor from receiving, using, and applying any money or personal property of said company to the repairs of said road or its appurtenances, or to its current expenses, or to the purchase of necessary machinery, or the renewal thereof; and the board of directors of said company may likewise distribute and pay any net annual incomes and profits to stockholders, after paying the interest on the said bonds, and providing for any sinking fund required to be created and kept. It is further provided, that all the property herein and hereby conveyed to the party of the second part shall be held by them in special trust and confidence, and upon the conditions following, that is to say:

1st. That these conveyances are for, and shall be, by the said party of the second part, their successors and assigns, held, used, and owned solely for the benefit and protection and security of the persons and corporation who shall hold and own the bonds issued as aforesaid by the party of the first part, and for enforcing the stipulations of said company as to said issue of bonds, and the disposal thereof, and securing the same, and the final payment thereof, in their true intent and meaning, whether contained in said bonds, or the interest-warrants attached to them, or in this deed.

53

2d. That for the better assuring and confirming the title and powers of the said party of the second part, their successors and assigns, in the said premises and property hereby conveyed, and in and to any premises and property or rights hereafter accruing, or to be acquired by said party of the first part, appurtenant to said railroad, which is intended to pass or be passed by this conveyance, the said party of the first part, their successors and assigns, will and shall, as often as may be lawfully required by the party of the second part, or their successors or assigns, holding the above-granted trust do such acts, and make such other and further conveyances and assurances in law as such party in the second part shall, by counsel learned in the law, be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed or trust.

3d. That if the said party of the first part, their successors or assigns, shall well and truly pay to the holders of said bonds, so issued and secured, the respective sums of money and interest due and accruing on said bonds on the days and times therein mentioned, and according to the tenor and effect of said bonds, then and thenceforth this indenture, and all the estate hereby granted, shall become and be utterly void and of no further effect; and the same shall be, by such payment, wholly annulled and satisfied, without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part or their successors.

4th. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds, or some of them or, until default shall have been made in respect to something herein required to be done by the said party of the first part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate the said railroad property, and franchises,

and appurtenances, and to renew, replace, and repair the same, and every part thereof, and take and receive and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

5th. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued or to be issued, according to the tenor of the coupons thereto annexed, or of the provisions hereof; or in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bond on which such default shall occur, the said party of the first part hereby covenants and agrees to and with the party of the second part, and their successors and assigns, that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to him
54 or them, or to their agent, the actual possession of the herein granted and demised railroad and premises, together with all the books, records, papers, accounts, and money of said company, and all management and control thereof; and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the incomes and profits thereof; and if said property shall, after such taking possession thereof, be sold, then from the sale thereof; or such expenses may be paid from the sale of any personal property, as the said trustees may deem proper; and that said party of the second part, and their successors, having taken such possession, may manage, operate, and control said road and property and all of its affairs, and appoint all needful agents and employees for that purpose, and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payment of said interest so in default, according to the true intent and tenor of the said bonds and the coupons annexed, and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same; first paying all expenses of such possession and management, and all taxes, assessments, and charges on said property, and a just compensation for their own services as such trustees. But in any and all cases of such taking of possession by said party of the second part, and paying up any such default, and the expenses aforesaid, the said party of the second part shall immediately thereafter redeliver the said railway and premises, books, records, and money and accounts into the possession of the party of the first part: Provided, that no such demand for such possession shall be made by said trustee or trustees until they shall have been required by the holders of at least the one-half of all of the said issue of bonds which shall then be unpaid and outstanding to make such demand, and to take such possession of said road and property.

6th. That in case default shall be made as aforesaid, and shall continue as aforesaid, it shall be lawful for the party of the second part, or their successors in said trust, after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of, to the highest bidder, all and singular the premises hereby conveyed, or intended so to be, at public auction in the city of Chicago, in the State of Illinois, or in the city of Indianapolis, in the State of Indiana, at such time as said party of the second part may appoint, first having demanded of the party of the first part full payment of all money then in default, and also first having given sixty days' notice of such time and place of sale, and a full description of the property so to be sold, by advertisement thereof in three newspapers, one published in Chicago

in the State of Illinois, one published in Indianapolis in the State of Indiana, and one published in the city of New York; and to adjourn said sale from time to time in their discretion; and, if adjourned, to make such sale in manner aforesaid, without further notice, at the time and place to which it may be adjourned; and upon such sale, and receiving the purchase-money therefor, to convey the same, by good and sufficient conveyances, to the purchaser or purchasers; and such sale and conveyance, so made, shall convey all the right, title, estate, interest, and property of the said party of the first part, of, in, and to the said road, premises, franchises, and property to the said purchaser, in fee simple, forever; and shall be a perpetual bar, both in law and equity, against the said party of the first part, and their successors and assigns, and against all and every person claiming or to claim the said premises, or any part thereof, under them, forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities which may have been made or incurred by the party of the second part in operating and controlling and maintaining the said railroad and property, and in managing its business and affairs while in possession, and all payments for taxes, charges, and assessments on said premises, or any part thereof, as well as reasonable compensation for their own services, to apply the proceeds of such sale to the payment of the interest on said bonds, or so many of them as shall have been issued by said party of the first part, and be then outstanding, pro rata, until all such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds, pro rata, until such principal shall be paid; and if any surplus remain after paying all of said matters, to pay such surplus to the party of the first part; and such payments shall be so made on said bonds, whether the same shall have become due or not at the time of such sale.

It is hereby declared that the receipt of said trustee or trustees, making any such sale to the purchaser of the premises for the purchase money, shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not after payment of said purchase money, and obtaining such receipt therefor, be liable, or in any way bound, to see said purchase money applied to this trust, or otherwise, or in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

7th. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents, or by judicial authority, the said trustee or trustees may bid for and purchase, or cause to be purchased, the property so sold, or any part of it, in behalf of the holders of said bonds secured by this deed then outstanding, at a reasonable price, if only a part be sold; but, if the whole property be sold, at a price not exceeding the whole amount of said bonds and interest then outstanding.

8th. If default be made by the party of the first part in the payment of any half year's interest on any of said bonds, and the warrant or coupon for such interest shall have been presented, and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding; and the said party of the second part may so declare the same, and notify the party of the first part thereof, and upon the written request of the holders of a majority of the said bonds then outstanding shall proceed to collect both principal and

interest of all such bonds outstanding, by foreclosure and sale of said property or otherwise, as herein provided.

9th. It is hereby mutually agreed by the parties hereto that
56 the trustees shall be responsible only for gross negligence and willful default, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly and satisfactorily indemnified against the same by one or more of said bondholders.

In case of the death, resignation, or inability to act of any trustee, the board of directors may appoint a successor, and, failing to so appoint, any court of competent jurisdiction may appoint a trustee to fill such vacancy, on the application of the holders of the one-sixth part of the bonds hereby intended to be secured then outstanding, and such appointment by the board or by such court shall invest the trustee so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

The foregoing grants, conveyances, and covenants in this indenture contained, are made and entered into by the Chicago, Danville and Vincennes Railroad Company, party of the first part hereto, upon the express understanding, agreement, and condition, that in case the party of the first part, or its successors or assigns, shall deem it necessary or desirable, at any future time, in consequence of an increase of the traffic of the said railroad, to issue and dispose of any amount of bonds, or other evidences of indebtedness, for the purpose of providing the means for the purchase of additional rolling-stock and equipment for the use of said railroad or of said company, its successors or assigns, or for the improvement of said railroad or property, that then, and in that case, the said Chicago, Danville and Vincennes Railroad Company, its successors or assigns, may secure the payment of the principal and interest of such bonds or other evidences of indebtedness so issued and disposed of, by mortgage upon all the roads and property of said company hereinbefore mentioned and described, and that such mortgage, when so made and executed, shall constitute and be and become a lien upon all said roads and property prior to, and having precedence of, the liens hereinbefore provided for by this instrument.

In witness whereof the said Chicago, Danville and Vincennes Railroad Company, the party of the first part, has caused these presents to be executed and signed by the president of their company, and attested by their secretary, in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, the day and year first above written. And the parties of the second part have hereunto set their hands and affixed their seals the same day and year aforesaid.

[SEAL.] CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

Attest, J. S. CAMPBELL, *Secretary.*
W'M R. FOSDICK, [SEAL.]
JAMES D. FISH, [SEAL.]
Trustees.

57 STATE OF NEW YORK,
City and County of New York, ss:

Before me, the undersigned, a notary public of the State of New York, in the city of New York, duly commissioned and qualified, came

this day William D. Judson, to me personally known, and also known by me to be the president of the Chicago, Danville and Vincennes Railroad Company, the party of the first part in the above deed of trust, and who executed the same on behalf of said company, and acknowledged that the said railroad company, and he, as the president of said company, and in its behalf, did sign, seal, and deliver the said indenture and deed of trust, as and for its own act and deed, and for the uses and purposes therein mentioned.

Also personally appeared before me, at the same time, the above-named William R. Fosdick and James D. Fish, trustees, and the party of the second part in the foregoing mortgage and deed of trust, and personally known to me as the persons who signed the same as such, and acknowledged that they did sign, seal, and execute the same, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this twenty-fifth day of April, anno Domini 1872.

[SEAL.] J. A. WELCH,
Notary Public, New York City and County.

58 EXHIBIT H.

Certificate of indebtedness of the Chicago, Danville and Vincennes Railroad Co.

Principal and interest payable in United States gold coin.

$.] [No. .

The Chicago, Danville and Vincennes Railroad Company acknowledges itself indebted to , or bearer, dollars, payable on the first day of February, 1879, with interest from and after February 1st, 1874, at seven per cent. per annum, payable semi-annually, on the first days of February and August in each year, at the office or agency of said company, in the city of New York, on the delivery of the annexed interest warrants at such place as may be designated by said company, by advertisement published in said city, and both principal and interest payable in United States gold coin.

This certificate is issued by the Chicago, Danville and Vincennes Railroad Company in exchange for a like amount of interest coupons from its first-mortgage bonds, maturing in equal proportions on the following dates, viz: October 1st, 1873, April 1st, 1874, October 1st, 1874, and April 1st, 1875, from bonds numbered as specified in the trustee's certificate hereto attached, for the purpose of deferring the payment of said coupons until the maturity of this certificate. The coupons aforesaid having been deposited in trust with William R. Fosdick, trustee, for the benefit, protection, and security of the holder hereof.

It is agreed on the part of said Chicago, Danville and Vincennes Railroad Company, that in case of the non-payment of the interest hereon on demand, at any time when due, or in case of the non-payment of the coupons from its first-mortgage bonds, maturing October 1st, 1875, and on the first days of April and October in each succeeding year, until the payment of this certificate, or in case of the non-payment of the principal of this certificate at maturity, that the holder hereof, in such case, hall be entitled to demand of and receive from the trustee above named the interest-coupons hereinbefore mentioned, with all their rights to proceed against the company, upon the surrender of this certificate to said trustee.

In testimony whereof the said company have caused the foregoing to be attested on its behalf by its president and treasurer, and its corporate seal to be affixed hereto, at the city of Chicago, in the State of Illinois, this twentieth day of November, 1873.

President.

Treasurer.

I hereby certify that I have received interest coupons from the first-mortgage bonds of the Chicago, Danville and Vincennes Railroad Company, number , amounting to dollars, as stated in the above certificate of indebtedness, which I hold in trust, upon the terms and conditions above expressed.

Trustee.

[$.

The Chicago, Danville & Vincennes Railroad Company will pay the bearer, at its agency in the city of New York, dollars, in coin, on the first day of February, 1879, for semi-annual interest on its "certificate of indebtedness."

No. .

Treasurer.

EXHIBIT I.

59 *Mortgage to secure convertible mortgage bonds.*

FORM OF MORTGAGE.

This indenture, made this sixteenth day of December, in the year one thousand eight hundred and seventy-two, between the Chicago, Danville and Vincennes Railroad Company, a corporation of the States of Illinois and Indiana, party of the first part, and James D. Fish and James W. Elwell, of the city and State of New York, trustees, upon certain trusts hereinafter specified and provided, the party of the second part:

Whereas the Chicago, Danville and Vincennes Railroad Company, a corporation of the States of Illinois and Indiana, under and in pursuance of the provisions of the acts incorporating the same, are constructing and operating a railroad in said States, commencing at the city of Chicago, and extending southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, in Illinois, to the city of Danville, and also extending from a point on the line above described, distant about twelve miles north of Danville aforesaid, in a southeasterly direction, to the boundary-line of the State of Indiana, and thence in said last-named State in a southeasterly direction to Covington, in Fountain County; thence southerly to Montezuma, in Parke County, and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad; also, a branch road, extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to the village of Newburg, in said county; and is now engaged in constructing and operating the same.

And whereas at a meeting of the board of directors of the said Chicago, Danville and Vincennes Railroad Company, the party of the first

part, held pursuant to law, on the fourteenth day of December, in the year one thousand eight hundred and seventy-two, the said board of directors resolved and enacted an order and resolution as follows, to wit:

"Whereas in consequence of an increase of the traffic of this company's road it has become necessary to provide the means for the purchase of additional rolling-stock and equipment for the use of the company, and for the improvement of the company's road and property: Therefore,

"Resolved, That an issue of bonds shall be made by the company, designated 'Convertible mortgage bonds,' amounting to one million of dollars, eight hundred of said bonds to be for the sum of $1,000 each, and four hundred of said bonds to be for the sum of $500 each, all of said bonds to bear seven per cent. per annum interest, payable semi-annually on the first days of February and August in each year, and the principal to be payable on the first day of February, 1893, and both principal and interest to be payable in United States gold coin, in the city of New York; each bond to be convertible into the capital stock of the company at par, at any time before maturity, upon thirty days' written notice to the company, and each bond to contain an express waiver of all recourse by the holder of the same to any individual liability of the stockholders of this company.

"That said bonds shall be dated as made on the first day of January, A. D. 1873.

"In case default be made in payment of any half year's interest on any of said bonds, and the warrant for said interest shall have been presented and its payment demanded, and such default shall have continued for six months after such demand, without the consent of the holder of said coupon or bond, then and thereupon the principal of all such bonds shall become immediately due and payable. That a warrant for each semi-annual payment of interest shall be made and authenticated, for and on behalf of this company, by the secretary of this company, and annexed to each bond. That said bonds shall be prepared by the president of the company, and signed by him for and on behalf of this company, and attested by the treasurer, and shall have annexed to them a certificate of authentication of the trustee or trustees, under the mortgage made to secure them, and shall not be issued or obligatory without such certificate.

"That for the purpose of securing the final payment of said issue of $1,000,000 of bonds, with all interest to accrue thereon, this company will make and deliver to James D. Fish and James W. Elwell, as trustees, a mortgage and deed of trust, conveying to said persons as trustees, for the benefit of every holder of such bonds, or any of them, all the road of this company, extending from Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, in said State of Illinois, and also extending from a point on the line above described, situate about twelve miles north of Danville aforesaid, in a southeasterly direction to the boundary-line of the State of Indiana; and thence in said last-named State in a southeasterly direction to Covington, in Fountain County; thence southerly to Montezuma, in Parke County; and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad. Also a branch road extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to the village of Newburg, in said county, and also all such additional branch roads as this company may hereafter construct, for the purpose of extending its tracks into the coal and

mining regions in the vicinity of its said main lines of road, with all the property, rights, and franchises of this company, of every kind and description whatever pertinent to said roads, between all said terminal points, and all the income to be had and derived from operating the same—in trust, to secure the final payment of said bonds as aforesaid—with all the rights, covenants, powers, and authority, in case default be made by this company in such payments as in said deed of trust
61 shall be specified, to foreclose said mortgage, and to sell the property so mortgaged, or to take possession of and operate the same, and receive the incomes thereof; but not, in any case, before any default, to disturb or interfere with this company in the possession, control, and management thereof, or from receiving the incomes thereof, or from selling or exchanging any of the personal property, or machinery, or equipments thereof, or any of the lands or real estate, not necessary for the use and operation of the railroad; as to all of which, as will be in said mortgage and deed of trust specifically stated, agreed upon, and set forth. That the president of this company is hereby authorized and fully empowered to make and sign, and execute, and seal with the corporate seal of this company, the said mortgage and deed of trust, and to acknowledge the same for and on behalf of this company for record; and on the acceptance of said trust, and signing the said deed by the said trustees, to cause the same to be recorded according to law, and thereupon to make, sign, execute, and prepare said $1,000,000 of bonds for issue and sale, as shall be hereafter ordered by this board."

And whereas the said Chicago, Danville and Vincennes Railroad Company, party of the first part, hath, in accordance with the provisions of said order and resolution, made and executed bonds to the amount of one million dollars, of the form, denomination, and character prescribed by said order and resolution, and hold the same to be authenticated, issued, used, and disposed of, for the purposes in said order and resolution stated:

Now, therefore, in further pursuance of said order and resolution, and to the end and purpose of securing and assuring the punctual payment of said one million dollars of bonds, and every part thereof, which may be issued, to the persons who may become the holders of the same, or any of them:

This indenture witnesseth, that the said Chicago, Danville and Vincennes Railroad Company, party of the first part, in consideration of all and singular the premises, and for the further consideration of one dollar to them in hand paid by the said party of the second part, trustees as aforesaid, at and before the ensealing hereof, the payment of which is hereby acknowledged, doth hereby grant, bargain, sell, enfeoff, release, assign, and convey unto the said James D. Fish and James W. Elwell, trustees as aforesaid, party of the second part, and to their successors and assigns, all and singular the entire railroad of the party of the first part, lying, being, and extending from its terminus in the city of Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, in said State of Illinois, and also extending from a point on the line above described, situate about twelve miles north of Danville aforesaid, in a southeasterly direction to the boundary-line of the State of Indiana, and thence in said last-named State in a southeasterly direction to Covington, in Fountain County; thence southerly to Montezuma, in Parke County, and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad. Also, a branch road extending from the main line before described, commencing at a point

on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to the
62 village of Newburg, in said county, the entire length of road being about two hundred and ten miles; and also all such additional branch roads as said party of the first part may hereafter construct, for the purpose of extending its tracks into the coal and mining regions in the vicinity of said main lines of road; with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between all said terminal points which said party of the first part now has or owns and possesses, or may hereafter acquire, either in law or equity, of every kind whatever pertinent thereto. Provided, however, that this grant and conveyance aforesaid shall not include nor operate to transfer any lands, goods, chattels, property, machinery, equipment, or other matters which said company now owns, or may hereafter acquire, that need not be used for any purpose incident to the management or operation of said railway, or the repair thereof, or in the business of said railway company; nor any franchises, power or corporate right to build that portion of the line of railroad which, by its charter, it is authorized to locate and construct, and not embraced within the terminal points hereinbefore described; but all which last-mentioned franchises and right of way shall be wholly excepted and exempt from these presents, and the grant and conveyance herein specified; nor shall these presents in any way prohibit the party of the first part from selling and conveying or otherwise disposing of the same, and all the proceeds thereof; nor from receiving, using, and applying any money or personal property of said company to the repairs of said road or its appurtenances, or to its current expenses, or to the purchase of necessary machinery, or the renewal thereof; and the board of directors of said company may likewise distribute and pay any net annual incomes and profits to stockholders, after paying the interest on the said bonds, and providing for any sinking fund required to be created and kept. To have and to hold the said railway property, premises, interests, rights, and appurtenances mentioned as aforesaid, and hereby conveyed, or intended so to be, by this conveyance, unto the said party of the second part, as such trustees as aforesaid, and to their successors in said trust, or assigns, to and for the only use, benefit, and behoof of the said trustees and their *cestui que trust*, their successors and assigns forever; but in special trust and confidence, and upon the conditions following, that is to say:

1st. That this conveyance is for, and shall be by, the said party of the second part, their successors and assigns, held, used, and owned solely for the benefit and protection and security of the persons and corporations who shall hold and own the bonds about to be issued as aforesaid by the party of the first part, and for enforcing the stipulations of said company as to said issue of bonds, and the disposal thereof, and securing the same, and the final payment thereof, in their true in-
63 tent and meaning, whether contained in said bonds, or the interest warrants attached to them, or in this deed.

2d. That for the better assuring and confirming the title and powers of the said party of the second part, their successors and assigns, in the said premises and property hereby conveyed, and in and to any premi-

ses and property or rights hereafter accruing or to be acquired by said party of the first part, appurtenant to said railroad, which is intended to pass or be passed by this conveyance, the said party of the first part, their successors and assigns, will and shall, as often as may be lawfully required by the party of the second part, or their successors or assigns, holding the above-granted trust, do such acts, and make such other and further conveyances and assurances in law as such party of the second part shall, by counsel learned in the law, be advised are necessary for the better carrying out of the object of the parties to this mortgage or deed of trust.

3d. That if the said party of the first part, their successors or assigns, shall well and truly pay to the holders of said one million dollars of bonds, so to be issued and hereby secured, the respective sums of money and interest due and accruing on said bonds on the days and times therein mentioned, and according to the tenor and effect of said bonds, then and thenceforth this indenture, and all the estate hereby granted, shall become and be utterly void and of no further effect; and the same shall be, by such payment, wholly annulled and satisfied, without any further receipt or entry of satisfaction of record whatever, but shall be, if required, entered and certified on any record of the same as so satisfied by the party of the second part, or their successors.

4th. That until default shall have been made by the party of the first part in the payment of principal or interest of the said bonds, or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate the said railroad property, and franchises, and appurtenances, and to renew, replace, and repair the same, and every part thereof, and take and receive and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

5th. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued or to be issued, according to the tenor of the coupons thereto annexed, or of the provisions hereof; or, in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due, without the consent of the holder of such bond on which said default shall occur, the said party of the first part hereby covenants and agrees to and with the party of the second part, and their successors and assigns, that within six months after such default shall have occurred, the same default still continuing, the said party of the first part, on demand of the said trustee or trustees for the time being, shall and will surrender to him or them, or to their agent, the actual possession of the herein granted and demised railroad and premises, together with all the books, records,
64 papers, accounts, and money of said company, and all management and control thereof; and that all the expenses of taking, holding, managing, and operating said property, if possession be so taken, shall be paid from the income and profits thereof; and if said property shall, after such taking possession thereof, be sold, then from the sale thereof; or such expenses may be paid from the sale of any personal property, as the said trustees may deem proper; and that said party of the second part, and their successors, having taken such possession, may manage, operate, and control said road and property, and all of its its affairs, and appoint all needful agents and employes for that purpose, and pay the same, and receive all the incomes, issues, and profits thereof, and apply the same to the payment of the said interest so in

default, according to the true intent and tenor of the said bonds and the coupons annexed and to the terms of this deed, until such default shall have been satisfied, if such incomes and profits will satisfy the same—first paying all expenses of such possession and management, and all taxes, assessments and charges on said property, and a just compensation for their own services as such trustees. But in any and all cases of such taking of possession by said party of the second part, and paying up any such default, and the expenses aforesaid, the said party of the second part shall immediately thereafter re-deliver the said railway and premises, books, records, and money and accounts into the possession of the party of the first part; provided that no such demand for such possession shall be made by said trustee or trustees until they shall have been required by the holders of at least the one-half of all the said issue of bonds which shall then be unpaid and outstanding to make such demand and to take such possession of said road and property.

6th. That in case default shall be made as aforesaid, and shall continue as aforesaid, it shall be lawful for the party of the second part, or their successors in said trust, after entry as aforesaid, or other entry, or without entry, personally, or by agent or attorney, to sell and dispose of, to the highest bidder, all and singular the premises hereby conveyed, or intended so to be, at public auction, in the city of Chicago, in the State of Illinois, or in the city of Indianapolis, in the State of Indian, at such time as said party of the second part may appoint, first having demanded of the party of the first part full payment of all money then in default; and also first having given sixty days' notice of such time and place of sale, and a full description of the property so to be sold, by advertisement thereof in three newspapers; one published in Chicago, in the State of Illinois, one published in Indianapolis, in the State of Indiana, and one published in the city of New York; and to adjourn said sale from to time, in their discretion, and, if adjourned, to make such sale in manner aforesaid, without further notice, at the time and place to which it may be adjourned; and upon such sale, and receiving the purchase-money therefor, to convey the same, by good and sufficient conveyances, to the purchaser or purchasers; and such sale and conveyance so made shall convey all the right, title, estate, interest, and property of the said party of the first part of, in, and to the said road, premises, franchises, and property to the said purchaser, in fee-simple, forever; and shall be a perpetual bar, both in law and equity, against
65 the said party of the first part, and their successors and assigns, and against all and every person claiming or to claim the said premises, or any part thereof, under them, forever. After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities which may have been made or incurred by the party of the second part in operating and controlling and maintaining the said railroad and property, and in managing its business and affairs while in possession, and all payments for taxes, charges, and assessments on said premises, or any part thereof, as well as reasonable compensation for their own services, to apply the proceeds of such sale to the payment of the interest on said bonds, or so many of them as shall have been issued by said party of the first part and be then outstanding pro rata until such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds pro rata until such principal shall be paid; and if any surplus remain after paying all of said matters, to pay such surplus to the party of the

first part; and such payments shall be so made on said bonds whether the same shall have become due or not at the time of such sale.

It is hereby declared that the receipt of said trustee or trustees, making any such sale to the purchaser of the premises for the purchase-money, shall be a full and sufficient discharge of such purchaser therefor, and that said purchaser shall not, after payment of said purchase-money, and obtaining such receipt therefor, be liable, or in any way bound to see said purchase-money applied to this trust, or otherwise, or in any manner answerable for its loss or misapplication, or obliged to inquire into the authority for making such sale.

7th. At any sale of the property aforesaid, or any part thereof, made by virtue of these presents, or by judicial authority, the said trustee or trustees may bid for and purchase, or cause to be purchased, the property so sold, or any part of it, in behalf of the holders of said bonds secured by this deed then outstanding, at a reasonable price, if only a part be sold; but if the whole property be sold, at a price not exceeding the whole amount of said bonds and interest then outstanding.

8th. If default be made by the party of the first part in the payment of any half year's interest on any of said bonds, and the warrant or coupon for such interest shall have been presented and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupon or bond, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, anything in such bonds to the contrary notwithstanding; and the said party of the second part may so declare the same, and notify the party of the first part thereof, and, upon the written request of the holders of a majority of the said bonds then outstanding, shall proceed to collect both principal and interst of all such bonds outstanding, by foreclose and sale of said property or otherwise, as herein provided.

9th. It is hereby mutually agreed by the parties hereto, that the trustees shall be responsible only for gross negligence and willful de-
66 fault, and that they shall not be bound to do any act touching the execution of the trust, except at their own option, which may involve them in personal expense or liability, unless first duly and satisfactorily indemnified against the same by one or more of said bondholders.

In case of the death, resignation, or inability, to act of any trustee, the board of directors may appoint a successor, and failing to so appoint, any court of competent jurisdiction may appoint a trustee to fill such vacancy, on the application of the holders of the one-sixth part of the bonds hereby intended to be secured, then outstanding, and such appointment by the board or by such court shall invest the trustees so appointed with all the interest, estate, power, and authority in the premises, and subject him or them to the same obligations hereby given and granted to the party of the second part herein.

In witness whereof the said Chicago, Danville and Vincennes Railroad Company, the party of the first part, has caused these presents to be executed and signed by the president of their company, and attested by their secretary, in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, the day and year

first above written. And the parties of the second part have hereunto set their hands and affixed their seals, the same day and year aforesaid.

[SEAL.] CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

Executed in presence of—
H. A. GILDERSLEEVE,
R. N. WHITLOCK.

JAMES D. FISH, [SEAL.]
JAMES W. ELWELL, [SEAL.]
Trustees.
J. S. CAMPBELL,
Secretary.

STATE OF NEW YORK,
City and County of New York, ss:

Before me, the undersigned, a notary public of the State of New York, in the city of New York, duly commissioned and qualified, came this day William D. Judson, to me personally known, and also known by me to be the president of the Chicago, Danville and Vincennes Railroad Company, the party of the first part in the above deed of trust, and who executed the same on behalf of said company, and acknowledged that the said railroad company, and he, as the president of said company, and its behalf, did sign, seal, and deliver the said indenture and deed of trust as and for its own act and deed, and for the uses and purposes therein mentioned.

Also personally appeared before me, at the same time, the above-named James D. Fish and James W. Elwell, trustees, and the
67 party of the second part in the foregoing mortgage and deed of trust, and both personally known to me as the persons who signed the same as such, and each acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this nineteenth day of December, anno Domin, 1872.

[SEAL.] H. A. GILDERSLEEVE,
Notary Public, New York City and County.

EXHIBIT K.

Chattel mortgage.

This indenture, made the twelfth day of January, A. D. one thousand eight hundred and seventy-five, between the Chicago, Danville and Vincennes Railroad Company, a corporation existing under the laws of the States of Illinois and Indiana, party of the first part, and R. Biddle Roberts, of the city of Chicago and State of Illinois, trustee, upon certain trusts hereinafter specified and provided, the party of the second part, witnesseth as follows:

That the party of the first part, in order to pay off and discharge certain debts and obligations incurred in the construction, equipment, and operating of said railroad, and to enable them to conduct, operate, and continue the business of said company, and also in pursuance of the resolutions of said company passed the second day of January, A. D. 1875, a copy of which resolutions is hereto annexed, marked "A," and forming part of this indenture, have made and issued their several bonds or obligations, all having even date herewith, and which are numbered and are of the several denominations following, to wit: Nine hundred and

fifteen bonds of one thousand dollars each, numbered from number 1 to 915, both inclusive; one hundred bonds of five hundred dollars each, numbered from number 916 to 1015, both inclusive; one hundred bonds of two hundred and fifty dollars each, numbered from 1016 to 1115, both inclusive; and one hundred bonds of one hundred dollars each, numbered from 1116 to 1215, both inclusive; and each of said bonds being made payable to said party of the second part, or bearer, at the said company's office, in the city of Chicago, on the twelfth day of January, A. D. 1877, with interest thereon at the rate of seven per cent. per annum from the date thereof.

Now, this indenture witnesseth that the party of the first part, in order to secure the payment of the said several bonds hereinbefore mentioned as they respectively fall due, in the hands of bona-fide holders thereof, and the interest thereon, and in consideration of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bar-
68 gained, sold, assigned, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, assign, release, convey, and confirm, transfer and set over, unto the said party of the second part, trustee as aforesaid, and his successors or assigns, all the locomotives, passenger-cars, baggage-cars, freight-cars, shop-tools, and all other machinery and personal property, now owned by or in the possession of the said party of the first part, and more particularly named and described in the schedule hereto annexed marked "B," and which said schedule forms a part of this indenture, subject, however, to such prior liens as there may be upon the same, or upon any portion thereof, if any such prior liens exist.

To have and to hold the same to the said party of the second part, or to his successors or assigns, forever. And it is hereby further mutually declared, granted, and agreed by the said company, party of the first part, and said party of the second part, trustee, representing the rights and interests in the securities of the parties taking or holding the said bonds and obligations, in the form and manner following, viz: That if the said party of the first part shall well and faithfully pay the said principal sum of said bonds, on the day when the same are made payable by this indenture, as above mentioned, according to the true intent and meaning thereof, with the interest due thereon, or shall deliver up, cancelled, to the said party of the second part, all of the said bonds mentioned herein, then these presents shall cease and determine; that until default shall have been made by the party of the first part, in the payment of the principal or interest of the said bonds, or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, shall be suffered and permitted to possess, use, occupy, manage, and operate all of the chattels and property mentioned herein, and to renew and repair the same and every part thereof, and take and receive, and use, the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

But if default shall be made by the party of the first part in the payment of said bonds or obligations, at the time they shall fall due, according to the true intent and meaning thereof, then it shall be lawful for the said party of the second part, or his successors or assigns, and it shall be his or their duty, and they are hereby authorized and empowered, either in person or by attorney, or by his agents, to take possession of the said chattels, and all other articles mentioned in the said annexed schedule, and to sell or dispose of the same, or any part thereof, at pub-

lic auction, at the best price he can obtain for the same, according to the statute in such cases made and provided, and out of the proceeds arising from such sale to defray the expenses of such sale, and his own just and lawful charges, and then pay over the proceeds to and amongst the parties holding the said bonds or obligations, so far as may be necessary to pay the amount then due and in arrears upon the same, and the balance of the proceeds (if any there be) to be paid over to the said parties of the first part, or their assigns.

In witness whereof the said Chicago, Danville and Vincennes
69 Railroad Company, the party of the first part, has caused these presents to be executed and signed by the president of their company, in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed, the day and year first above written, and the party of the second part has hereunto set his hand and affixed his seal, the same day and year aforesaid.

(Signed) [SEAL OF CO.] CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

(Signed) [SEAL] R. BIDDLE ROBERTS, *Trustee.*

STATE OF ILLINOIS,
County of Cook, ss:

This chattel mortgage was acknowledged before me by W. D. Judson, president of the Chicago, Danville and Vincennes Railroad Company, and R. Biddle Roberts, the said trustee, and entered by me this thirteenth day of January, A. D. 1875.

(Signed) J. CHARLES HAINES,
Justice of the Peace.

EXHIBIT A.

Resolved, That an issue of bonds shall be made by the company, amounting in the aggregate to a sum not exceeding one million of dollars, in such denominations as the officers of the company may deem advisable, payable in not exceeding two years from date of issue, either with or without interest, and that the said bonds be secured by a chattel mortgage to a trustee or trustees, upon all the locomotives, passenger-cars, baggage and freight cars, and all other machinery and shop-tools and other personal property now owned by or in possession of the company, subject to such prior liens as there may be upon the same in favor of the bondholders of the company, or any other parties, if any such prior liens exist, and that the president of company be, and he hereby is, authorized, directed, and fully empowered to make and sign, and execute and seal, with the corporate seal of the company, the said chattel mortgage or deed of trust, and to acknowledge the same for and on behalf of this company for record, and on the acceptance of said trust by the said trustee or trustees, to cause the same to be recorded according to law, and thereupon to make, sign, execute, and prepare the said bonds for issue, and to use and dispose of the said bonds to settle and pay, or to secure, any portion of the indebtedness of this company.

70 EXHIBIT B.

Thirty-four (34) locomotive-engines, numbered from No. 1 to 34, both inclusive.

Three hundred and seventy-six (376) gondola coal-cars, numbered from 1 to 376, both inclusive.

One hundred and fifteen (115) stock-cars, numbered from No. 501 to 615, both inclusive.

One hundred and fifteen (115) box-cars, numbered from No. 1,001 to 1,115, both inclusive.

Two hundred and twenty-five (225) gondola coal-cars, numbered from No. 0141 to 0365, both inclusive.

Six (6) caboose-cars, numered from No. 1 to 6, both inclusive.

Four (4) baggage-cars, numbered from No. 1 to 4, both inclusive.

Three (3) mail and passenger-cars, numbered from No. 1 to 3, both inclusive.

Eight (8) passenger-coaches, numbered from No. 1 to 8, both inclusive.

The following machinery and tools in the machine-shops at Danville, Vermillion County, Illinois:

1 44-inch iron planer.	1 car-wheel borer.
1 30-inch iron planer.	1 boiler-maker's shears.
2 14-inch shaping-machines.	1 boiler-maker's punch.
1 slotting-machine.	1 hydraulic crank-pin press.
1 lathe, 34-inch swing.	1 steam hammer.
1 lathe, 16-inch swing.	1 bolt cutter.
1 lathe, 20-inch swing.	1 small emery grinder.
1 lathe, 25-inch swing.	1 axle lathe.
1 axle-centreing lathe.	1 drilling press.
1 hydraulic wheel press.	1 drilling press.
1 driving wheel press.	1 stationary steam-engine.

(Endorsed:) Filed September 14, 1875. W'm H. Bradley, cl'k.

71 Afterwards, to wit, on the 23d day of October, 1875, said defendant, by its solicitor, filed in said clerk's office its answer to the amended bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer to amended bill of complaint.

In the circuit court of the United States, northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH, complainants, *vs.* CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY, JAMES W. ELWELL, and R. BIDDLE ROBERTS, defendants. } In chancery. Amended bill.

The separate answer of the Chicago, Danville and Vincennes Railroad Company, one of the defendants, to the amended bill of complaint of William R. Fosdick and James D. Fish, complainants.

This defendant, now and at all times hereafter reserving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors and uncertain-
72 ties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer thereto, answering saith:

Respondent admits that it is a corporation organized and existing

under and by virtue of the laws of the State of Illinois, and was so organized under an act of the general assembly of said State, entitled "An act to incorporate the Chicago, Danville, and Vincennes Railroad Company," approved February 16th, A. D. 1865, and has been engaged since that time in business, by virtue of said act, at and within the northern district of Illinois; that by its charter it was authorized and empowered to locate, construct, build, maintain, and operate a railroad from a point in Lawrence County, on the Wabash River, opposite Vincennes, in the State of Indiana, upon the most eligible route to Chicago, as alleged in said amended bill of complaint; also to unite and consolidate its railroad, stock, and property with any other railroad company or companies in this or any other State, whose line or lines of road should cross or intersect respondent's road, or that should be built
73 along or upon the line thereof, upon such terms as should be mutually agreed upon, and was empowered to execute contracts to perfect such consolidation.

Admits that in and by said charter it was authorized to borrow money on its credit, not exceeding its authorized capital stock, at a rate of interest not exceeding ten per centum per annum, payable semi-annually, and to execute bonds therefor with interest coupons annexed, securing the payment of the same by a mortgage or deed of trust upon the whole or any part of its road and income then existing, or to be afterwards acquired.

Admits that its directors were authorized to negotiate and sell said bonds in the manner alleged in said amended bill of complaint.

Admits that prior to March 10th, A. D. 1869, its capital stock was $2,500,000, and that thereafter, and on said 10th day of March, A. D. 1869, it caused 2,500 bonds to be issued, duly executed, numbered from 1 to 2,500 inclusive, each in the sum of $1,000, payable in gold coin on April 1st, A. D. 1909, with interest at seven per cent. in gold, pay-
74 able semi-annually, on the first days of April and October in each year, on delivery of said coupons in the city of New York, at a place designated by said respondent, and also admits that Exhibit A of the original bill herein is a copy of one of said bonds, with coupon attached.

This respondent further admits that, for the purpose of securing said 2,500 bonds, and the interest coupons thereto attached, it executed and delivered to complainants, as trustees, a mortgage or deed of trust, conveying to them for the benefit of holders of such bonds, all of its said railroad, extending from the city of Chicago, in Cook County, Illinois, through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, and thence southeasterly to a point on the State line of Indiana, and all its franchises, equipments, property, tolls, rents, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods and chattels, connected with or used in the using or operating of its said railroad, or appertaining thereto, and all its rails, ties, fuel, fences, right of way, and easements, and all cars, engines, tools, all rents, reservations, and reversions of every nature, includ-
75 ing all property which said respondent then owned or might thereafter acquire between said terminal points.

Also admits that Exhibit B, attached to the original bill, is a copy of said mortgage; also that said mortgage, on said 10th day of March, A. D. 1869, was duly executed and delivered to said trustees, and the trust by them accepted. Also that said mortgage, during said month of March, A. D. 1869, was duly recorded in all the counties heretofore named, and

became a first lien upon the property of this respondent, according to the conditions thereof.

Your respondent further admits that all of said bonds were certified by said trustees, and that they were thereafter sold by respondent; that they are now outstanding, and a valid lien against this respondent.

Respondent further admits that it consolidated, March 4th, A. D. 1872, with the Rossville and Indiana Railroad Company, such consolidation taking the name of this respondent, and that Exhibit D of the original bill is a copy of such articles of consolidation.

Respondent further admits that, on March 9th, A. D. 1872, it consolidated with the Western Indiana Railroad Company, such consoli-
76 dation taking the name of this respondent, and that Exhibit D of the original bill is a copy of such articles of consolidation.

Further admits that said Western Indiana Railroad Company was, prior to said last-named consolidation, a corporation of the State of Indiana, and that this respondent, by virtue of said consolidation, became and was a corporation of the said State of Indiana, as well as a corporation of the State of Illinois; and, further, that this respondent became and was vested with lawful power under the laws of said State of Indiana to locate, construct, and operate a continuous line of railway, extending from the boundary-line between the States of Indiana and Illinois, at a point and through the counties named in said complainant's amended bill of complaint.

Your respondent further admits that, on the 12th day of March, A. D. 1872, for the purpose of providing means for the construction and equipment of said line of road in Indiana, it caused bonds to be executed to the amount of $1,500,000, being 1,500 bonds, in $1,000 each, payable 40 years after date, with interest payable, and numbered, respect-
77 ively, as alleged in said amended bill of complaint.

Respondent further admits that, to secure said last named bonds, and coupons thereto annexed, it executed and delivered to complainants, on said March 12th, A. D. 1872, its certain mortgage or trust-deed, conveying to said trustees, respondents' entire length of road in Indiana, described in complainants' said amended bill of complaint, and also all such additional branch roads as respondent might thereafter construct in extending its track into the coal and mining regions in the vicinity of said main line of road, with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods and chattels, connected with or used in operating said line of road, and all its rails, ties, fuel, fencing, and erections, right of way, easements, cars, engines, tools, and all rents, reservations, and reversions of every kind; that Exhibit F is substantially a copy of said mortgage.

Further admits that afterwards, to wit, on said 12th day of March, A. D. 1872, said mortgage was delivered to complainants as trustees; and said respondent believes that said complainants accepted the
78 trust thereby created and entered upon the performance of their duties, and duly certified all of the said bonds so issued.

Respondent further admits that said bonds were disposed of in the manner alleged in said amended bill of complaint, and are now outstanding and valid obligations of this respondent. Further, that said mortgage was, during said month of March, A. D. 1872, duly recorded in Warren, Fountain, Park, and Clay Counties, in the State of Indiana, and became a first lien upon all the property and franchises of respondent within said counties.

Your respondent, further answering, admits that it did, by its proper

officers, on the 24th day of April, A. D. 1872, execute a further or so-called consolidated mortgage, for the purposes stated in said mortgage, a copy of which is filed with said amended bill of complaint as Exhibit G; and respondent avers that by the terms of said mortgage it is provided, and the right to said corporation given, to execute a still further mortgage for the purpose of providing means, whenever necessary, for the purchase of additional rolling-stock and equipment for the use of its said railroad, which should have a priority of lien to the said mort-
79 gage of April 24th, 1872. That the necessity of such additional equipment became apparent to the officers of said corporation in the summer of 1872, and it was then determined to issue the so-called convertible mortgage which was afterwards executed by said company.

For this reason said mortgage of the 24th of April, 1872, was never recorded in any of the counties upon the line of either division of said company's road, and did not become, and is not, a lien upon any of the property of this respondent.

Respondent further admits that on May 6th, A. D. 1872, it consolidated with the Attica and Terre Haute Railroad Company, and that these two corporations became a consolidated corporation by the name and style of this respondent. Exhibit E of original bill herein is substantially a copy of such articles of consolidation.

Admits, further, that it proceeded with the construction of the line of railroad in the States of Indiana and Illinois, and has constructed and put in operation a large portion thereof, and that said line of road in Illinois commences at Dalton, 20 miles south of Chicago, and runs southerly to Danville, in Vermillion County, a distance of about
80 108 miles, with a branch from Bismark, in said Vermillion County, to the east line of said State, a distance of about 7 miles, making a total of about 115 miles.

Admits that it runs its cars over the line of the Chicago and Southern Railroad from a point near Dalton into Chicago; also, that it was a portion of the line of the Pittsburgh, Cincinnati and St. Louis Railway Company near and within Chicago, and that it has side tracks of its own in said city.

Respondent further admits that in Indiana it has constructed and completed main line of about 18 miles and about 5 miles of branch road; from Snoddy's Mills to Montezuma, a distance of about 18 miles, the right of way has been procured, and about twenty per cent. of the grading finished; from Montezuma to Brazil Coal-fields, about 25 miles, the right of way has been procured, and 85 per cent. of the grading done, all the bridging and about 2 miles of track laid. That respondent's road in Indiana is known as the Indiana Division, and its road in Illinois as the Illinois Division.

81 Admits that it paid all coupons maturing upon said bonds and each of them up to and including the one maturing April 1, 1873.

Respondent, further answering, says that true it is, that subsequent to October 1st, A. D. 1873, the holders of said 4,000 bonds to the amount of $2,801,000 thereof placed in the hands of William R. Fosdick, one of the complainants herein, the coupons on said bonds maturing October 1st, 1873, April 1st and October 1st, 1874, and April 1st, 1875, and that each of said holders received from respondent a certificate of indebtedness for the amounts of said coupons so placed in the hands of said Fosdick, and which said certificates were each payable on April 1st, 1879, with interest from and after February 1st, 1874, at seven per cent. per annum, payable semi-annually, on the first days of February and August, respectively, in each year, at the office or agency of said re-

spondent in the city of New York, upon the delivery of the interest-warrants annexed to said certificates, both principal and interest payable in gold.

That true it is, that in said certificates respondent agreed, amongst other things, that in case of non-payment thereon on demand
82 when due, or in case of the non-payment of coupons maturing October 1st, 1875, and thereafter until payment of said certificates on maturity, the holder thereof should be entitled to demand and receive from said Fosdick the interest-coupons described in said certificates, and with all his rights to proceed against this respondent. Exhibit H is a copy of one of said certificates.

And said respondent, further answering, says that the interest-warrants upon said funding certificates maturing August 1, 1874, were paid by said company when presented for payment, and that all of said coupons have been paid.

That as to such interest-warrants maturing February 1st, 1875, there remains unpaid only the sum of $3,167 $\frac{77}{100}$, all the others of said coupons having been paid by said respondent.

And the respondent says that said balance of said interest-warrants then remaining unpaid, to wit, the sum of $3,167 $\frac{77}{100}$, would have been paid and canceled by this respondent had they been presented for payment at maturity, and that this respondent is not and should not be held responsible for such apparent default.

83 Said respondent says that on the 22d day of February, A. D. 1875, one Stephen Osgood, without any notice whatever to this respondent, upon his ex parte application to the judge of the circuit court of Will County, in the said State of Illinois, wrongfully and fraudulently procured the appointment of receivers of all the property, assets, and income of the said respondent within the State of Illinois, and that such receivers forcibly took possession of the offices and all the property of said respondent on said 22d day of February, and by the aid of writs of assistance, and other process issued by said court, or the judge thereof, held the possession of all said property of this respondent, its earnings and income, until the first day of June, 1875, at which time said receivers were removed by the order of this honorable court, and a receiver of all such property appointed under the prayer of the complainants in the said original bill of complaint contained.

And this respondent says that on said 22d day of February it was not in default in the payment of any of said certificate-warrants that matured February 1st, 1875; that all of said warrants were paid
84 as presented to this respondent prior to said 22d day of February: and that such balance of $3,167 $\frac{77}{100}$ was not paid, for the reason that the action of said State court had deprived this respondent of the power to meet such payments. But the said respondent denies that said corporation was on said first day of February, 1875, insolvent and unable to meet the payment of said certificate-warrants, as charged in said amended bill of complaint, but, on the contrary, avers and charges that at all times after the maturity of said interest, and until said 22d day of February, said respondent had the pecuniary ability and was ready and willing to pay all such interest, and did in fact pay all such interest-warrants when presented.

And the said respondent further says and charges the fact to be that the net earnings of said company, during the year 1874, and the months of January, February, April, and May of the present year, were more than sufficient to pay all the interest accruing upon the bonds issued under the trust-deed to the complainants; and also the interest upon said

certificates of indebtedness, and upon all other mortgage-bonds that had been negotiated and sold by said respondent.

85 And the said respondent says that the said company is not in default in the payment of any certificate interest-coupons after proper demand, and that therefore none of the holders of said certificates are lawfully entitled to the return from the said Fosdick, special trustee as aforesaid, of the bond interest-warrants so funded and deposited with the said Fosdick.

Your respondent admits that the contracts for funding said interest-warrants are substantially set forth in said complainants' amended bill, and that the holders of about four-fifths of the said 4,000 first-mortgage bonds then, and about three-fourths of all now, outstanding entered into said agreement, and so funded their said interest-warrants.

Your respondent, further answering, admits the issue of a so-called convertible bond by said corporation, bearing date the first day of January, A. D. 1873, to the amount of one million dollars, which said bonds were secured by a deed of trust, dated the 16th day of December, A. D. 1872, by which the said company conveyed to the said James D. Fish and James W. Elwell, as trustees, all its property, rights, and fran-

86 chises in the States of Indiana and Illinois, subject, however, to the prior liens created by the trust-deeds of March 10th, A. D. 1869, and of March 12th, A. D. 1872, all of which said bonds, amounting in the aggregate to one million dollars, have either been sold or hypothecated by said company.

Your respondent also admits the resignation of the said James D. Fish of his said trust, and that the said Elwell is now sole trustee under said deed of trust.

Your respondent, further answering, denies that said mortgage of December 16th, A. D. 1872, creates a third lien upon the property of said corporation. It admits that the trust-deed of March 12th, A. D. 1872, is a first and prior lien upon all the property of said respondent situate within the State of Indiana, and that the lien created by the trust-deed of March 10th, A. D. 1869, is a first and prior lien upon all the property described therein, that is to say, all the property, rights, and franchises of said company embraced within the terminal points of the road it was authorized by its charter to construct and necessary to the management and operation of said road, but said respondent avers that all other property, rights, and franchises of every kind and

87 character belonging to said company, or thereafter to be acquired, is, by the terms of said trust-deed, expressly reserved from the lien thereby created; and respondent says that prior to the first day of January, 1873, it did, under authority conferred by its charter, construct a branch road from Bismark, a station on its main line, in the said county of Vermillion, in a southeasterly direction to the west line of the State of Indiana, a distance of about seven miles, upon which said branch road said mortgage of December 16th, A. D. 1872, is a first and only lien.

And your respondent, further answering, says that it is not true, as stated in said amended bill of complaint, that at the time of the filing of the original bill herein a large number of judgments had been obtained against this respondent, nor had a large amount of its property been levied upon to satisfy said judgments, but, on the contrary, respondent says that on the said 27th day of February, A. D. 1875, to the best of respondent's knowledge and belief, there was not in the hands of any officer of any court any execution against this respondent, and

88 there were only two or three judgments unappealed from against

the respondent, and your respondent avers, as to those, satisfa tory arrangements had been made for their gradual payment.

Respondent admits that on said 22d day of February a part of its property in the State of Indiana was held by a writ of attachment, but the said respondent avers, and charges the fact to be, that said writ was issued on the 19th day of said month of February, in a suit then commenced in Warren County, Indiana, on pretended claims and demands against your respondent, but upon which it was in no manner liable; and respondent says, to the best of its knowledge and belief, said suit in Indiana was instituted for the purpose of aiding the said Osgood in his fraudulent action of placing the property of respondent in the hands of receivers, nominated by and in the interest of himself and of those combining and confederating with him. That after such appointment had been made, said attachment suit and proceedings were dismissed without any trial or hearing whatever.

And the said respondent, further answering, says that it ad-
89 mits that it has a large outstanding and unsecured indebtedness, principally created in the purchase of rolling-stock and equipment for the use of said company; but respondent submits to this honorable court that the fact of such indebtedness does not authorize the foreclosure of said trust-mortgage nor justify the appointment of a receiver of the property of this respondent, nor has there been any default in the payment of interest as will authorize the seizure of said property and income, as claimed by said amended bill of complaint.

Your respondent, further answering, admits that said company, by its proper officer, did, on the 12th day of January, A. D. 1875, make, execute, and deliver to the defendant, R. Biddle Roberts, a chattel-mortgage, whereby said company conveyed to the said Roberts, as trustee, the personal property therein named to secure the payment of certain bonds to be issued by said company, amounting in the aggregate to the sum of one million dollars; that said mortgage was executed by authority of the board of directors of said company, and in pursuance of a resolution of said board adopted on the day of December, A. D. 1874.

And your respondent avers that said mortgage was not in-
90 tended to, and did not in fact, affect the securities or equities of the complainants, or of any other bond-creditors of said company, but that said bonds were assigned to be used only to "settle, pay, or secure any portion of the then existing indebtedness of said company," as expressed in said resolution, and that said bonds have been used for such purposes and no other.

Your respondent, further answering, says that it has no knowledge, information, or belief of the number of said bondholders under said deeds of trust that have made demand upon said complainants that they should execute their said trust; but respondent says that said company is not, and was not at the commencement of this action, in default to one-half of such interest, and therefore respondent says that said bondholders had no right to make such demand, and neither were the complainants nor respondents required to accede to such demands by the terms of said trust-deed.

And the said respondent, further answering, says that it has no means of knowledge of the per cent. of the holders of said interest-warrants that matured October 1st, 1873, that presented such
91 warrants to the company and demanded payment thereof: but respondent says, if it is true, as charged, that at least ninety per cent. made such demands, at least eighty per cent. of the entire

number afterwards waived such payment, and consented to an extension thereof, as hereinbefore stated, and that as to such eighty per cent. said company is in no default whatever.

And as to the holders of said six hundred and ninety-eight of said bonds, who did not fund their interest, the said respondent says, upon information and belief, and so charges, that a large majority thereof have consented to such default in the payment of said interest, and have assented to such extension; that many of the holders of such bonds have expressed to the officers of said company their assent to such extension, and promised and agreed (but not in writing) that they would in no manner interfere with, or, by their adverse action, defeat the plans of said company for the extension of payment of said interest.

And respondent further says that it has no knowledge that any holder of said bonds ever elected to declare the principal due on account
92 of the default of said company, with the exception of the said Osgood, who only claimed to hold nine of said bonds. And as to the said Osgood the respondent says that, to the best of its knowledge and belief, the said Osgood never has, nor has any one at his request ever demanded of said company, or of any of its officers or agents, payment of any of the coupons attached to any of the nine bonds of which he claims to be the owner, and that the only notice the respondent has ever had that the said Osgood had so elected, or that he demanded payment of either principal or interest was derived from his said bill of complaint, filed in said circuit court of Will County, as aforesaid, on said 22d day of February.

And the said respondent further avers that on the 23d day of February, 1875, the said defendant offered and tendered the attorney of record of said Osgood, in open court in said county of Will, full payment, principal and interest, of all the bonds held by the said Osgood, which was refused by said attorney, and that respondent at the same time offered to deposit in court the full amount of said prin-
93 cipal and interest, upon condition that said receivers should be discharged and said property restored to said respondent, which offer was refused by the said court.

And the respondent further charges that until the different holders of said bonds had been advised of the action of said court, and said respondent had been unlawfully dispossessed of its property, no one of said bondholders had demanded of the complainants that they should demand the possession of said property of this respondent, or that they should in any manner interfere with its control, and the respondent states upon information that the only demand then made upon said complainants was that they should, as such trustees, protect and preserve such property from such unlawful conversion.

And respondent says that it has never received from the complainants, as trustees, notice that they had declared the principal of said bonds due and payable, and says that no demand of payment of such principal has ever been made upon this respondent.

And said respondent, further answering, denies that said complainants have ever been requested in writing or otherwise by the holders of a majority of said bonds, to proceed to collect, either prin-
94 cipal or interest of said bonds, by foreclosure of said trust mortgage or sale of said property or in any other manner.

And the said respondent says that as to the holders of said eight hundred and one bonds, the coupons of which have been funded as aforesaid, they and each of them are estopped from making any present demand upon said trustees, to foreclose said trust mortgage and from

prosecuting any present suit for such foreclosure either in their own names as complainants or in the names of such trustees.

And the said respondent, further answering, neither admits nor denies that said Indiana division of respondents' road is insufficient to secure the payment of the said Indiana division bonds, and humbly submits to this honorable court that such allegation is wholly immaterial to the issues herein presented.

And your respondent admits that the value of its said Illinois division of road greatly exceeds the amount of bonds issued under and secured by said mortgage of March 10th, A. D. 1869, and charges the fact
95 to be that the net income derived from said Illinois division is greatly in excess of the current interest upon all of said bonds.

And your respondent denies that there is any other matter, cause, or thing in the said complainants' said amended bill of complaint contained, material or necessary for this defendant to make answer to, which is not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with ts reasonable costs and charges in this behalf most wrongfully sustained.

CHICAGO, DANVILLE AND VINCENNES RAILROAD CO.,
By W. D. JUDSON, *President.*

E. WALKER,
Solicitor.

Amended bill.

In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
CHICAGO, DANVILLE AND VINCENNES RAILroad Company et al. } In chancery.

96 The demurrer of the Chicago, Danville and Vincennes Railroad Company to the amended bill of complaint of William R. Fosdick and James D. Fish, complainants.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said amended bill of complaint, to be true in such manner and form as the same are therein and thereby set forth and alleged, as to so much of said amended bill of complaint, and on the eleventh page thereof as charges that it will be impossible for said company to fulfill the conditions of said funding agreements, and that the holders of said certificates have the right to rescind said agreements; and to so much of the said amended bill, and on said page thereof as charges that the principal of said bonds has become due and payable, this defendant doth demur thereto, and for cause of demurrer showeth that the said complainants have not by their said amended bill, made such a case as entitles them, in a court of equity, to any relief from or against this defendant as to the matters hereinbefore specified or any of such matters.

Wherefore, and for divers other good causes of demurrer in the
97 said amended bill contained, *as* to so much of the complainants' said amended bills as before is set forth, this defendant doth demur, and prays the judgment of this honorable court whether it shall

be compelled to make any further or other answer to such part of the said amended bill as is so demurred unto as aforesaid.

I certify that in my opinion the foregoing demurrer of the Chicago, Danville and Vincennes Railroad Company, defendant, to the amended bill of complaint of William R. Fosdick and James D. Fish, complainants, is well founded in law, and proper to be filed in the above cause.

E. WALKER,
Solicitor and of Counsel for Defendant.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Edwin Walker, being duly sworn, does depose and say that he is the attorney of the Chicago, Danville and Vincennes Railroad Company, the defendant named in the foregoing demurrer, and duly authorized and empowered as such attorney to make this affidavit in its behalf.

He further swears that he has read the foregoing demurrer
98 to the amended bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

EDWIN WALKER.

Subscribed and sworn to before me Oct. 23, 1875.

E. A. DRUMMOND,
U. S. Com'r.

(Endorsed:) Filed Oct. 23, 1875. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 6th day of January, A. D. 1876, the intervening bondholders, by their solicitors, filed in said clerk's office, their petition in said entitled cause, which said petition is in the words and figures following, to wit:

Petition of intervening bondholders.

99 Circuit court of the United States, northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
v.
THE CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY, and others. } In chancery.

Your petitioners, Stephen Osgood, Frederick W. Huidekoper, Thomas W. Shannon, John M. Dennison, George W. Gill, Alanson A. Sumner, Chandler Robbins, and William T. Hickok, respectfully show unto the court that they are the owners and holders of a large amount of the bonds and coupons issued by the defendant, the Chicago, Danville & Vincennes Railroad Company, the payment of which is secured by the execution and delivery of the trust deed or mortgage, dated March 10, 1869, and the supplementary trust deed or mortgage dated April 24th, 1872, both which trust deeds were duly executed, acknowledged, and delivered unto the said original complainants herein, William R. Fosdick and James D. Fish, as trustees, for the use, benefit, and behoof of your petitioners and all other bondholders of said issue of bonds.

And your petitioners further show that on the 27th day of February, 1875, the complainants filed their bill of complaint herein, alleging that in divers respects the conditions of said trust deeds had been broken by the said railroad company, and that it had forfeited all and singular its

title and estate in said mortgaged property, and that the said
100 corporation was insolvent, and praying that the said mortgage should be foreclosed and the property therein specified should be sold, under the orders of this court, to satisfy the principal and interest of the bonds issued under said mortgage, and that an account should be taken of the amount due on such securities.

And afterwards, to wit, on the day and year last aforesaid, the said Chicago, Danville & Vincennes Railroad Company duly entered its appearance to said action, and submitted itself to the jurisdiction of this court.

And afterwards, to wit, on the 14th day of September, 1875, the said complainants duly filed in this court their amended bill, praying the same relief as aforesaid, and the said railroad company hath filed its answer to said amended bill.

And these petitioners pray reference to the said original and amended bill of complaint and unto the said answer to said amended bill of complaint, as the same now remain upon the files of the court; and these petitioners aver that all and singular the statements and allegations of said amended bill of complaint touching the execution, delivery, and record of said trust mortgages, the non-payment of interest upon such bonds, the insolvency of said railroad company, and the breach of condition of said mortgages, are true as they are set out in said amended bill of complaint, and these petitioners pray the benefit of all and singular such allegations, to the same extent as though they had again specifically set them out at length in this petition.

And your petitioners also show that this court, upon the prayer of the said bill, appointed a receiver of all and singular the property of said railroad corporation, and has been and still is administering the property thereof so within its jurisdiction for the benefit of the creditors thereof, according to their several priorities.

And your petitioners show that the said line of railroad constructed and operated by the said corporation in the State of Illinois and Indiana has always been managed as one property, and the equipment has been used promiscuously over and upon each part of said road, and no separate accounts have been kept and preserved of the exact earnings, receipts, or operating expenditures on each division of said line, and that the entire first mortgage bonded debt of said corporation is $4,000,000, which bears interest at and upon the rate of 7 per
101 centum per annum, payable in gold coin, on the 1st days of April and October; that each such interest installment amounted to the sum of $140,000 gold, and the said corporation has not paid any portion of the coupons falling due Oct. 1, 1873, April 1, 1874, Oct. 1, 1874, and April 1, 1875, and has not been in the receipts of earnings, or funds from any source, to enable it to satisfy any portion of the principal of such four coupons.

And your petitioners show that on the first day of October, 1873, the said railroad corporation defaulted in the payment of interest on its bonds as aforesaid, and that large numbers of the coupons maturing on said day were presented at the office of the corporation, in the city of New York, and payment thereof duly demanded, and payment thereof was refused for want of funds, and the said corporation, by its board of directors, passed and recorded a resolve and published circulars to the bondholders, announcing the inability of said corporation to pay any portion of said current coupon falling due Oct. 1, '73, and also the three succeeding interest warrants due in April and October, 1874, and April, 1875.

And being so in default, and having broken the condition of said mortgages, the said railroad corporation, by its then board of directors, published a circular asking indulgence from its bondholders on the statements and conditions stated in the said original and amended bill herein, viz, that the said four coupons on the bonds were to be deposited in trust with a special trustee, and certificates to be issued for the principal thereof, payable February 1, 1879, with interest at 7 per cent., with the distinct agreement that in case of the non-payment of the interest on any such certificate on demand at any time when due, or in case of the non-payment of the coupons of the first mortgage-bonds due October 1, 1875, and on the first days of April and October in each succeeding year until said February 1, 1879; that the holder of said certificate should be entitled to surrender such certificate and receive and proceed against the corporation upon such original interest warrants deposited with the trustee; a copy of such circular and form of certificate is hereunto annexed and reference prayed thereto.

And your petitioners show that the statements of the said corporation and its officers presenting such funding scheme to the bond-cred-
102 itors, were false and fraudulent, and largely concealed, and understated the indebtedness and concealed the embarrassed and insolvent condition of the corporation, and, also, that said Fosdick and Fish were cognizant of such statements and the nature thereof, and at the request of the corporation assisted in circulating the same among and procuring the assent of the bond-creditors and were compensated therefor.

And relying upon the said statements, the holders of $409,000 out of said $560,000 principal of said four coupons, consented to such funding arrangement, but the holders of the remainder thereof never at any time consented to any extension of time, or in any manner agreed or barred themselves from proceeding against said corporation by reason of such original default, and your petitioner Osgood never at any time funded, or agreed to fund, any of the coupons on his said bonds.

And your petitioners show that the said Chicago, Danville and Vincennes Railroad Company was not at and before August 1, 1875, in such financial condition that it could pay the interest due upon the said scrip certificates, but the said corporation was then, and ever since has been, insolvent, and it did not pay or cause to be paid the said interest upon such scrip certificates, and as shown by the report of the receiver of this court, the entire cash on hand on August 1, 1875, belonging to said corporation was only $426.03 in currency, with the pay-rolls and supply-bills from the previous month to be paid therefrom.

And your petitioners further show that the said railroad corporation became and was wholly insolvent at and before October 1, 1875, and that on that day it did not pay, or cause to be paid, the sum of $140,000, gold coin of the United States, due for interest upon the said first mortgage indebtedness of $4,000,000 in gold, although large numbers of such coupons were presented for payment at the said company's agency in New York, and payment demanded and refused, and in truth and fact the entire cash in hands of the receiver belonging to said corporation at said October 1, 1875, and available for such interest payment would not exceed about one-tenth part of what was then and there due for such interest installment, and for the want of such funds, the said $140,000 gold coin due October 1, 1875, from said railroad company, remains wholly unpaid and due unto your petitioners and others, the holders of said bonds, and by reason of such insolvency and default the said
103 funding scheme has become wholly inoperative and void as to those

who accepted it solely upon the conditions as aforesaid, and by reason of such default in the payment of said interest warrant due October 1, 1875, and the insolvency of said corporation, all such persons who consented to the extension of payment until 1879 of said four previous coupons, are now in equity, and according to such trust, entitled to enforce the same against said company in all respects as though the said funding agreement had never been by them assented to, and very many of the said bondholders who had been induced to accept such scrip certificates have notified said trustee since October 1, 1875, that by reason of such default and insolvency, they claimed recourse upon their coupons held in trust by him and tendered back the said certificates.

And your petitioners claim that by reason of such default and insolvency the entire amount of said five coupons amounting to $700,000 in gold is now due for interest alone upon the said first mortgage liability of said corporation.

And your petitioners further show that demand was also made at the office of said corporation in New York in December, 1874, for the payment of sundry coupons due April 1, 1874, and which were never funded or agreed to be so, and that payment thereof was refused and the said presentment and non-payment was duly evidenced by a public instrument of protest by a notary public in and for said county and city of New York, and the said coupons still remain unpaid, and more than six months having expired since the demand of payment of said coupons in October, 1873, and the default thereon, and more than six months having also expired since the demand of payment of such coupons in December, 1874, and the default thereupon, your petitioners claim that, by the conditions of said conveyances, the said principal of all and singular the said bonds has also become due, and that there is now due and owing by the said corporation the full sum of $4,700,000 upon said first mortgage indebtedness.

And your petitioners show that as to the said supplemental mortgage dated April 24, 1872, both the said James W. Elwell and James D. Fish, who were trustees in said later mortgage of January 1, 1873, were both directors of said corporation at both said dates, and when they accepted the trusts of said later conveyance, were both personally cognizant of the existence, terms and delivery of said conveyance of April 24,
104 1872, and had voted for its execution and delivery as directors of said railroad corporation.

And in that behalf your petitioners show that if said Fish has in fact ever resigned his trust under said mortgage of January 1, 1873, that such resignation was made after the institution of this action, and was colorably done under the advice of counsel so that he might be better able to maintain himself in his position as trustee in the said first mortgage as aforesaid, against the wishes of a majority of the bondholders.

And notwithstanding such resignation, the said Fish has a direct hostile interest against his cestui que trusts, for that the said Fish is now and for some time has been the president and a large stockholder in the Marine Bank of New York City, which said corporation has for about two years last past been a holder of $180,000 of such convertible bonds, and, therefore, directly and materially interested to defeat, delay, and lessen the security and recovery of your petitioners.

And your petitioners show that the capital stock of said railroad corporation is limited by its charter to $5,000,000, and that prior to January 12, 1875, the said bonded debt authorized to be issued, and then outstanding, was the sum of $5,000,000, and that in and by the charter of the said corporation, its power of borrowing money on bond and

mortgage is expressly limited to the amount of its authorized capital stock; and your petitioners further show that the said chattel mortgage and bonds of January 12, 1875, recited in the bill of complaint herein, were never authorized to be issued or executed by any vote of the stockholders as required by law, and that with the exception of $30,000 of said chattel-mortgage bonds now held as collateral by N. S. Bouton on a loan of $12,000, none of said chattel-mortgage bonds are held in good faith and for value and in the usual course of business, but that the same are held as follows: E. C. Bozart, $25,000, bonds; A. T. Chur, $31,000, bonds; Marine Bank of New York, $100,000, bonds; W. B. Stevens, $20,000, bonds; each and all such bonds being held as collateral security for debts existing prior to such issue and delivery of bonds, they being merely received as additional security and without any consideration paid at the time; and there are also others held by W. D. Judson and Amos Tenney, $624,000, bonds, $200,000 of which are claimed to
105 be held by them as collateral security for a certain mortgage by them previously executed, and $424,000 being claimed to be held as collateral security for their precedent endorsements of the notes of the said railroad company, and also $100,000, other of such bonds held by W. B. Stevens claimed to be held by him as collateral security for the benefit of the holders of convertible mortgage bonds then outstanding.

And your petitioners claim that as to the said bonds held by the said Marine Bank of New York, they were actually taken and received by the said Fish, as the officer thereof, or with his knowledge and consent after the filing of the bill herein, and that his interest in such $100,000, bonds, is hostile to the interest of your petitioners and all other bondholders; and your petitioners claim that the said chattel mortgage and bonds are, for the reasons aforesaid, illegal, fraudulent, and void, and do not constitute any valid or prior lien on any part of said property as against the liens of your petitioners.

And further in that behalf your petitioners show that in and by the mortgage of March 10, 1869, it is provided that the lien thereof shall attach to all property, real and personal, which the said corporation then owned or might thereafter acquire in law or equity, of any kind whatever, appurtenant to said railroad; and said corporation did further covenant that, to better secure and confirm the title of said trustees in and to all property which might thereafter be acquired by it, as appurtenant to said railroad, as it would, as often as it might be lawfully required by said trustees, make such further conveyances and assurances as might be necessary to better carry out the said trust; and notwithstanding such grants and covenants in said trust-mortgage, and that both said Fish and Fosdick were personally cognizant of the fact that the said corporation had acquired a large amount of equipment, engines, cars, and tools since the said delivery of said conveyance to them in 1869, they wholly failed, neglected, and refused to discharge their duties as trustees in that regard, or to demand or procure any conveyance or assurance whatever from the said mortgagor corporation, in order to more fully and completely vest in them, for the use of your petitioners and others, an indefeasible title to such after-acquired property, but, on the contrary thereof, the said Fish, as a director of said corporation, voted for the execution of said chattel-mortgage, directly against the interests of such bondholders, and both said trustees have per-
106 mitted the said bonds to be disposed of and appropriated in the manner and upon the considerations and by the persons and corporations aforesaid, without attempting to prevent the same.

And your petitioners show that at the date when the said trust-mortgage of March 10, 1869, was executed and delivered, that the said covenant and condition thereof extending the lien thereof to after-acquired property, as a paramount and prior claim, was a valid continuing covenant, binding all equipment whenever acquired, and that, by the judgment of the court of highest resort in said State of Illinois, there had been a fixed rule of interpretation validating and effectuating such covenant, and your petitioners and others purchased their securities, relying upon the validity and interpretation of such covenant, and your petitioners therefore claim that no law of a date subsequent to such covenant and mortgage can in any manner be invoked or be operative to impair the lien and security of such contract with them, and that, for the reasons and upon the facts aforesaid, your petitioners and the other first-mortgage bondholders of said railroad company have a lien and claim upon all and singular the property of said corporation of every kind, real and personal, now in existence on the line of railroad, and the income therefrom, which is, in equity, prior and superior to the claim of any other creditors whatsoever, and they pray that the court will so find and decree.

And as to the claim and pretense of the said railroad corporation and its officers, that its net earnings have been and are sufficient to discharge and satisfy the interest upon the said bonded debt, and that for such reason a foreclosure will not be decreed, these petitioners aver that said pretense is wholly false, and in that behalf show to the court, that on October 1, 1875, there was due, for current interest on the first-mortgage bond debt of $4,000,000, an installment of $140,000 in gold, which had never been funded or agreed so to be; that the entire amount of cash on hand, held by the receiver, was only $27,766.66 in currency, with the previous month's bills, his own salary and divers rentals to be deducted therefrom and paid out of such balance.

And your petitioners would further show that prior to the default in interest on the bonded debt, on October 1, 1873, the said corporation stated that it owed a floating debt, as follows:

107	For loans on bonds	$396,000
	For engines and cars	254,000
	For supplies and labor, etc	156,000
	Or a total of only	$806,000

That since said date, though the corporation now claims it has been in receipt of large net earnings, it has not therefrom paid any interest on its first-mortgage bonds, but the unpaid and past-due interest on such prior debt has accumulated until it is now represented by five coupons of $140,000 each, or $700,000 gold, or about $798,000 currency, and in addition thereto the receiver officially reports to this court that the floating debt of said corporation, on June 1, 1875, was as follows:

On operating account	$230,255 24
On construction account	92,889 22
On rolling-stock	377,307 40
On money borrowed	435,606 80
Or a total of	$1,136,058 66

showing an increase of floating liability since October 1, 1873, of $330,058.66, and adding to that sum the arrears of interest accrued during that period, as aforesaid, making an aggregate increase of indebtedness since October 1, 1873, of about $1,128,058.66, currency.

And these petitioners show that, in truth and fact, the said corporation defendant did not even pay the interest on its funding script due on August, 1874, and February, 1875, out of any net revenue earned by it, by the operations of its road, but that it was forced to raise the first installment by procuring the sale of certain Chicago and Southern Railroad Company's bonds, charged upon its books as being sold to it by J. E. Young & Co., and the last installment was paid out of money which it borrowed for the purpose, and for which the said corporation's paper is still outstanding.

And your petitioners show that said corporation is hopelessly insolvent, that it has no real or substantial interest in the property covered by said mortgages, and that the revenues and incomes actually derived from the operations of said road, as shown by its books and the receiver's reports and accounts, are entirely inadequate to satisfy the current
108 interest or the arrears of interest due to your petitioners and other bond-creditors, or even any considerable fraction thereof; and that although they are entitled to the prior claim upon all said property and its income, *that* they are not in fact in the receipt of any sums whatever upon their several demands, and the aggregate of their said debt is constantly and largely increasing; and your petitioners claim that it would be grossly inequitable to refuse, on the false pretense of their bankrupt debtor, to delay in ordering the sale of said mortgaged property so that they may be able to realize some portion of their demands.

Your petitioners, therefore, pray that the court will entertain this petition and will ascertain the facts thereof, and will speed this cause and direct an account to be forthwith taken of the sums due on such first mortgage to your petitioners and others, and will decree the payment thereof; and that such amount constitutes a first lien on all and singular the property, real and personal, of said corporation and its income in the hands of the receiver, and direct the sale thereof by the master of this court to satisfy the said sums so ascertained and adjudged to be due; and your petitioners pray for all further and other relief that may be necessary to secure the rights of themselves and all the first-mortgage bondholders of said corporation and as this court may be competent to award by reason of the premises.

STEPHEN OSGOOD,
F. W. HUIDEKOPER,
AND OTHERS,
Petitioners.

H. CRAWFORD,
J. E. MCDONALD,
Solicitors.

STATE OF INDIANA,
Marion County, ss:

F. W. Huidekoper, on oath, says that he is one of the petitioners above named, and that he has read the foregoing petition and knows the contents thereof and that the matters therein stated are true, as he verily believes.

F. W. HUIDEKOPER.

109 Subscribed and sworn to before me this 15th day of December, 1875.

[SEAL.] FRANK W. MORRISON,
Notary Public.

(Endorsed:) Filed Jan. 6, '76. W'm H. Bradley, cl'k.

A copy of an agreement such as your petitioner would be willing to enter into is herewith submitted.

SOUTHWESTERN CAR CO.,
By CHA'S S. MILLARD,
Pres't.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Charles S. Millard, being duly sworn, deposes and says that he is president of the Southwestern Car Company, the petitioner; that he has read the above petition by the said company subscribed and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

CHA'S S. MILLARD.

Subscribed and sworn to before me this 27th day of January, A. D. 1876.

W'M H. BRADLEY, *Clk.*

(Endorsed:) Filed Jan. 27, '76. W'm. H. Bradley, cl'k.

116 Memorandum of agreement made and entered into this twenty ninth day of October, in the year one thousand eight hundred and seventy-four, between William A. Adams, of Walford Manor, in the county of Salop, England (hereafter called "the lessor",) of the first part, the Southwestern Car Company (hereafter called "the builder"), of the second part, and the Chicago, Danville and Vincennes Railroad Company, a corporation created and organized under the laws of the States of Illinois and Indiana (hereafter called "the tenants"), of the third part.

Whereas the tenants have contracted with the said builder to build and deliver to the tenants of the said lessor, and for their use, certain rolling-stock, as set out in the schedule hereupon endorsed, and at the prices in the said schedule specified respectively, payable in United States gold coin, and such cars to be built in accordance with certain plans and specifications, and such plans and specifications to be signed by the said builder, by the said lessor or his agent, and the said tenants, and bear even date herewith; and the said cars are to be delivered at the following places and dates: The said rolling-stock to be delivered on the track of the J. M. and I. R. R'd Co., at the works of the builder, in Jeffersonville, Ind., on or before December first, eighteen hundred seventy-four:

117 Now it is agreed by the said lessor, the said builder, and the said tenants, as the said cars, or any of them, are approved by the said lessor or his agent, and by the said tenants, in writing, and delivered in accordance with the said contract between the said builder and the said tenants, that the said lessor shall pay to the said builder the said agreed price as specified in the endorsed schedule per car, and the said lessor shall become the absolute owner of the said cars so delivered and approved as aforesaid, and the said tenants shall hire from the said lessor the said cars, and on the following conditions:

1. That the said cars on delivery shall bear upon them, on cast-iron plates, the name of the said lessor as owner, and such other marks or insignia of ownership as the said lessor or his agent may at any time see fit to use, and shall be numbered from 198 to 247 inclusive.

2. That the contract for the building being between the said builder and the said tenants, the said lessor shall in no way be liable for any delay that may arise in the delivery of the said cars, or for the non-completion of the said contract, and that the said lessor shall only be

liable to let the said tenants such cars as shall actually be approved as aforesaid and delivered to the said tenants by the said builder, under the terms of the said contract with the said builder, and within
118 three months after the aforesaid specified dates of delivery respectively.

3. That the tenancy shall commence from the first day of December, 1874, for the term of five (5) years certain.

4. That the yearly rental for each car shall be as set out and specified in the schedule hereupon endorsed, payable to the said lessor by the said tenants, by equal monthly payments, in United States gold coin, to the agent of the said lessor for the time being in the United States at his place of business, and the first payments thereof shall be made on the first day of January next.

5. That if any of the said cars be delivered to the said tenants before the said first day of December, then and in such case a proportionate rental shall be added and paid by the said tenants to the said lessor; that if any of the said cars be delivered to the said tenants after the said first day of December, then and in such case a proportionate rental shall be deducted by the said tenants; but in the event of any of the said cars being delivered at any time subsequent to the said first day of December, the aggregate amount of the proportionate rental deducted or to be deducted by the said tenant, by reason of the delivery of cars subsequent to the first day of December, from the rent hereby received and made payable, shall in no case exceed the aggregate amount added and
119 paid or to be paid by the said tenant by way of proportionate rental for those cars delivered before the said first day of December; the intent and meaning of these presents being that no less than sixty (60) payments, amounting in all to the sum of the total amount of the five years' rental as set out in the schedule hereupon endorsed, and payable in United States gold coin, shall be made for each and every car by the said tenants to the said lessor.

6. That in case the said rent or any part thereof, or any other sum or sums of money falling due hereunder, shall remain unpaid at the expiration of seven days after the same shall become due, the said tenants hereby agree to pay the said lessor interest upon such rent or money as shall be so unpaid as aforesaid at and after the rate of ten (10) per centum per annum from the day on which such rent or money shall become due up to the day or days whereon such rent or money shall be actually paid to the said lessor; but the payment of such interest shall not in any manner prejudice the claim or powers of recovery of such rent or money herein contained.

7. That the said tenants shall convey the said cars from the place where they are now standing (or shall be built) to the place where they may require them at their own expense and at the end of the tenancy, by expiration of the term of years hereby limited or otherwise,
120 the said tenants shall and will deliver up and surrender said cars to the said lessor or his agent in proper and complete repair and working condition, less the fair wear and tear (unless the cars shall be purchased, as provided in clause 16), at the following point, namely, at the station of the said tenants in the city of Chicago, State of Illinois; and the said lessor or his agent shall be the sole and final authority to decide upon the condition of the said cars, and until his acceptance of the same, rental shall be charged thereon at the rate hereinbefore specified, and the said tenants shall pay on demand all costs and expenses of bringing said cars to the said point or points of delivery and all damages occasioned by neglect or refusal to comply herewith.

8. That the said tenants shall and will do all repairs, maintenance

(including all necessary greasing and oiling to the axles and axle boxes of the said cars), and painting required from time to time to the said cars, such repairs and maintenance and painting to be done to the satisfaction of the agent or engineer for the time being of the said lessor; and in the event of the refusal or non-compliance of the said tenant to do such repairs, maintenance, and painting, on receiving notice in writing from the said lessor or his agent requiring the same to be done,
121 it shall be lawful for the said lessor to do or cause the same to be done and charge the cost and expenses thereof to said tenants, and the same shall be recoverable in like manner as rent herein reserved; and that the said lessor and his agent shall at all times have access to said cars for the purpose of record and examination, and may exercise supervision over said cars and determine what repairs shall be made, and the said tenants shall give to the said lessor and his agent all information or assistance required for such purposes; whenever the said lessor undertakes the repair of any of the said cars the rental of the cars so undergoing repairs shall continue at the rate herein reserved.

10. That the said tenants shall not carry or permit to be carried in the said cars, or any of them, at any time during the said term any salt in bulk, manures (artificial or otherwise), lime, acids, petroleum or its products, or any other article that would corrode or injure them, under a penalty of twenty-five dollars, United States gold coin, per car for each and every occasion on which they or any of them are so loaded or used or worked, such penalty or respective penalties to be recoverable either as rent or as liquidated damages as the said lessor shall think proper.

11. That at all times during such tenancy the name, number,
122 and plate, and other marks and insignia of ownership of the said lessor shall be fixed and retained upon each of the said cars for the purpose of making the ownership publicly known, and the said lessor shall be entitled at all reasonable times to renew or repair the said plates, marks, or insignia of ownership, and have thereon such name or names, word or words, number or numbers, as the said lessor shall think fit; and in the event of any such plates, marks, or insignia being taken off, defaced, lost, or damaged, the tenants shall immediately restore such name, plate, marks, or insignia, or shall advise or make known to the said agent of the said lessor the extent of such damage, and, if required, send in such car to such place as shall be appointed by the said lessor for repair.

12. That the said tenants shall not assign, underlet, or otherwise part with the possession of, or suffer or allow any of the said cars by any means or under any circumstances whatever (except so far as is usual and necessary for interchange of traffic) to pass out of their possession without the consent in writing of the said lessor for that purpose being first had and obtained; and that the said tenants shall not cause or permit the said cars or any thereof to be pledged, seized, or held for any tax, debt, or obligation of said tenants, or to be in any man-
123 ner incumbered by or through said tenants; that the said tenants shall insure and keep insured all of said cars, and for this purpose the said tenants hereby constitute and appoint the said lessor and his agent their agent to effect said insurance, and all premiums of insurance made by the said lessor on behalf of the said tenants shall be repaid by the said tenants monthly, in the same manner as the rent hereinbefore reserved, and with the same remedies in case of default or payment of all or any part of said premiums. The said cars may be used by the said tenants in the service of the fast-freight line known as the Canada Southern Line, but such use shall not affect or prejudice any of the rights of the said lessor under this agreement.

13. That the said tenants shall not make any alterations in the cars, by adding thereto or withdrawing therefrom, without the previous consent in writing of the said lessor.

14. That on default of payment of the said rents or sums of money hereinbefore made payable, the said lessor or his agent may make demand in writing upon the said tenants for the payment thereof in manner and form following, to wit, by serving the said demand upon the president or secretary of the said tenants, or by placing the said demand in the post-office, prepaid, and in the form of a registered
124 letter, and addressed to the said tenants at their principal office in the city of Chicago, State of Illinois.

And after the expiration of seven days from said demand, or if the said tenants shall assign, underlet, or otherwise part with the possession of, or suffer or allow any of the cars by any means or under any circumstances (except so far as is necessary for interchange of traffic or for use in the service of the fast-freight line known as the Canada Southern Line, as aforesaid), to pass out of their possession without the written consent of the lessor, or shall suffer the name, plate, or other marks or insignia of ownership of the said lessor to be removed or defaced, it shall be lawful for the said lessor or his agent for the time being, at any time or times thereafter, and at any place or places, to seize, remove, and take away the said cars, or any of them, whether loaded or unloaded, with or without process of law, and also by notice in writing for that purpose to determine and put an end to this agreement, such notice to be served as follows, to wit, either personally upon the president or secretary of the said tenants, or by placing the said notice in the post-office, prepaid, and in the form of a registered letter, and addressed to the said tenants at their office in the city of Chicago, State of Illinois.

125 And such seizure, removal, or taking away of such cars shall be without prejudice to any right or cause of action of, by, or on the part of the said lessor; and such seizure of the said cars, or the total or partial destruction of any of them, shall not put an end to this agreement, or to the claims of the said lessor for amounts due or to become due, unless the said lessor shall so elect.

15. And it is hereby agreed that when the full number of cars above specified shall have been delivered, as aforesaid, or if, after the expiration of three months' delay in furnishing the same by the said builder, as referred to in clause 2 of this agreement, the said lessor shall elect to terminate this agreement as to such of the cars as have not been delivered, that then the said tenants shall accept a lease of such cars as shall have been delivered under the terms of this agreement, which lease shall in all respects conform to this agreement, and until the execution and acceptance of such lease this agreement shall have full force and effect as a lease, on the terms and conditions herein stated.

16. And it is hereby agreed that in consideration of such several sixty (60) payments during the said term of five (5) years, and all other sums of money due hereunder, and the interest which may have accrued
126 thereon, being fully paid to the said lessor, and in consideration of the sum of one dollar, United States gold coin, for each and every car in number being also paid by the said tenants to the said lessor within thirty (30) days after the expiration of the said term of five (5) years, that then the said rolling-stock, as set out in the schedule hereupon indorsed, shall be and become the absolute property of the said tenants.

In testimony whereof the said lessor has hereunto set his hand and seal and the said builder has caused these presents to be signed by its

president, and the said tenants have caused these presents to be signed by their president and their corporate seal to be hereunto affixed the day of the date first above written.

W. A. ADAMS.

Witness to the signature of William A. Adams:
C. LEMEALE ADAMS.

[SEAL.] CHA'S S. MILLARD,
President Southwestern Car Co.

[SEAL.] W. D. JUDSON,
President Chicago, Danville and Vincennes R'd Co.

Witness to the signature of W. D. Judson:
OLIVER ADAMS.

127 Schedule herein referred to and made part of this agreement.

Description of cars.	Price of each car, in gold.	Monthly rent of each car, in gold.	Yearly rent of each car, in gold.	Total rental of each car for five years, in gold.
Fifty box freight cars, Nos. 198 to 247, both inclusive	$450 00	$10 13	$121 50	$607 50

Statement of numbers of 50 box-cars delivered to C., D. and V. R. R. Co., belonging to W. A. Adams, of Shrewsbury, England]:

1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1161, 1162, 1163, 1164, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1186, 1187, 1188, 1189, 1200, 1190, 1191, 1192, 1193, 1194, 1195, 1201, 1196, 1197, 1203, 1204, 1205, 1206, 1227, 1228, 1229, 1230, 1231, 1232, 1233.

128 And on the same day, to wit, the 27th day of January, A. D. 1876, in the record of the proceedings of said court in said entitled cause before the Hon. Thomas Drummond, judge, is the following entry, to wit:

WILLIAM R. FOSDICK ET AL.
v.
THE CHICAGO, DANVILLE, AND VINCENNES Railroad Company et al. } In chancery.

Now comes The Southwestern Car Company, by its solicitor, and files its petition herein, and on motion it is ordered by the court that said petition be referred to Henry W. Bishop, esq., master in chancery of this court, to take proofs thereon and report the same to the court.

And now also comes Adna Anderson, receiver, by his solicitor, and files his petition herein for permission to pay the claim of Philips and Co., and on motion it is ordered by the court that said petition of said receiver be referred to Henry W. Bishop, esq., master in chancery of this court, to take proofs thereon and report the same to the court.

129 And on the same day, to wit, the 27th day of January, A. D. 1876, the said complainants and intervening bondholders, by their solicitors, filed in said clerk's office their answer to the petition of said Southwestern Car Company, which said answer is in the words and figures following, to wit:

Answer of complainants and intervening bondholders to petition of Southwestern Car Co.

U. S. circuit court, northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
ag'st
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company.

In the matter of the intervening petition of The Southwestern Car Company.

The complainants, William R. Fosdick and James D. Fish, and the intervening bondholders, Frederick W. Huidekoper, John N. Dennison, Thomas W. Shannon, George W. Gill, Alanson A. Sumner, Chandler Robbins, and William T. Hickok, who have been by order of the court duly admitted as parties herein to protect their interests, for answer to the petition filed herein by the said Southwestern Car Company, say:

130 That all and singular the railroad cars mentioned in the said petition were sold and delivered unto the Chicago, Danville, and Vincennes Railroad Company, prior to the institution of his action. That such sale and delivery was made by virtue of a certain written agreement, a copy of which is herewith filed, marked "Exhibit A" and made part of this answer.

That upon such sale and delivery of the said railroad cars to the said railroad company, the title thereto passed to said corporation, and became subject to the lien of the mortgage set out in the complainants' bill, and prayed to be foreclosed in this action, and that ever since the title to said cars so became vested in the said railroad company the said mortgage last above mentioned has constituted and does still constitute the first and paramount lien on said cars.

And these defendants deny the allegations of the said petition as to the ownership of said cars, and do aver that the said petitioner is not the owner thereof, or entitled to the possession thereof, nor does the petitioner have any claim in law or equity to the said personal property.

131 And these respondents further deny that the said petitioners have any valid claim or lien upon said cars, or any of them, under the laws of the State of Illinois, for that the said written agreement aforesaid, under which alone it claims title, was not executed, acknowledged, or recorded in such manner as is required by the laws of Illinois, in order to constitute a valid chattel mortgage, and these respondents claim that such unrecorded and unacknowledged chattel mortgage is, as to them, wholly void.

The respondents further show that the possession of said railroad cars was delivered to said railroad company about the date of said writing, and it so continued in the open possession and use of said cars until the receiver was appointed in this action, and that since hitherto the said receiver has been in the possession and use of said cars, and respondents further claim that ever since the institution of this action the first-mortgage bondholders have become entitled to the income and earnings of the said mortgaged property, and they deny the right of the said petitioner to appropriate any part of the income belonging to the first-mortgage bondholders to the payment of any pretended claim, either for the purchase-price of said cars or for the assumed rent thereof.

132 Respondents deny that the mortgaged property or the income thereof, received by the officer of this court or the proceeds of any sale, under foreclosure, can be appropriated to the payment of any pretended claim of rent, either pending or prior to the institution of his action.

Respondents submit that the receiver of this court cannot lawfully be instructed to take the income of the bondholders to purchase property which is already subject to their lien as the property of the mortgagor, and therefore they pray that this court refuse to make any order of allowance to the petitioner for rent or purchase of said cars, or for a redelivery of them to the petitioner, or directing their purchase on any terms by the receiver, and they pray that the petition be dismissed with costs.

W. R. FOSDICK, &c., *Trustees.*
F. W. HUIDEKOPER & OTHERS,
Intervening bondholders.

H. CRAWFORD, *Solicitor.*

(Endorsed:) Filed Jan. 27, 1876. W'm H. Bradley, cl'k.

133 Afterwards, to wit, on the 5th day of December, A. D. 1876, in the record of the proceedings of said court, in said entitled cause, before the Hon. Thomas Drummond, judge, is the following entry, to wit:

134 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court thereof.

WILLIAM R. FOSDICK AND JAMES D. FISH, complainants,
vs.
THE CHICAGO, DANVILLE & VINCENNES Railroad Company, James Elwell, and R. Bidwell Roberts, defendants.
} In chancery.

Decree.

It appearing to the court that the said several defendants have entered their appearance, and filed their several answers in said cause, and that the said complainants have filed their replications to the said several answers, and that heretofore the said cause was by order of said court referred to Henry W. Bishop, the master in chancery of said court, to take proofs and report, and that the report of said master was made and filed in said cause on the 24th day of June, A. D. 1876, and that the exceptions to said report have been and are overruled by the court:

Now, this day, this cause came on to be heard upon the said bill, the answers of said defendants, and the replications thereto, and the report of said master, and proofs taken in open court;

And it appearing to the court that the said defendant, the Chicago, Danville and Vincennes Railroad Company, was organized as a corporation, under and by virtue of the laws of the State of Illinois, during the year A. D. 1865, and from thence hitherto has been and still is such
135 corporation, and that as such corporation it was authorized to borrow money, and execute its bonds therefor with interest coupons annexed, and secure the payment of the same by mortgage or deed of trust upon its railroad and property then existing or afterwards to be acquired;

And it further appearing to the court that heretofore, and on the 10th day of March, A. D. 1869, the said railroad company caused to be executed and issued twenty-five hundred (2,500) bonds, numbered from one (1) to twenty-five hundred (2500), both inclusive, each for the sum of one thousand (1,000) dollars, payable in gold coin on the first day of April, in the year nineteen hundred and nine (1909), with interest at

the rate of seven (7) per cent. per annum in gold coin, payable semi-annually on the first days of April and October in each year, and that to secure payment of said bonds and the interest coupons thereto attached, the said railroad company, on the said 10th day of March, A. D. 1869, executed and delivered to the said complainants, William R. Fosdick and James D. Fish, as trustees, a mortgage, or deed of trust, of even date with the said bonds, in and by which the said railroad company conveyed to the said trustees all and singular the entire railroad of the said railroad company, lying, being, and extending from its terminus in the city of Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, and thence southeasterly to a point on the State line of the State of Indiana, joining and connecting at said point with the Evansville, Terre Haute and Chicago Railroad, being in length about one hundred and forty (140) miles, with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels connected with or used in the using or operating of said railroad or appurtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said railroad company then owned and possessed, or might thereafter acquire, either in law or equity, of every kind whatever, appurtenant thereto;

And it further appearing to the court that the said deed of trust, so executed and delivered to them as aforesaid, was by them thereafter, and during the said month of March, A. D. 1869, duly filed for record and recorded in each of said counties of Cook, Will, Kankakee, Iroquois, and Vermillion, in the State of Illinois, and thereby then and there became, and was and still is, a first lien upon all of the railroad, property, franchises, and appurtenances in said deed of trust described;

And it further appearing to the court that the said railroad company had, long prior to the filing of the bill in said cause, sold and disposed of all of the twenty-five hundred bonds secured by said deed of trust,
136 and that the same, and the coupons thereto attached, were then and there all outstanding and valid obligations of said railroad company, and secured to be paid by the said trust-deed;

And it further appearing to the court that heretofore and on the 4th day of March, A. D. 1872, the said Chicago, Danville and Vincennes Railroad Company entered into articles of consolidation with the Rossville and Indiana Railroad Company, which was then and there a corporation of the State of Illinois, whereby the said two corporations became and were consolidated under the name and style of the Chicago, Danville and Vincennes Railroad Company;

And that thereafter and on the 9th day of March, A. D. 1872, the said last-named company entered into articles of consolidation with the Western Indiana Railroad Company, which was then and there a corporation organized and existing under the general laws of the State of Indiana, by which said articles the said two corporations became and were a consolidated corporation by the name and style of the Chicago, Danville and Vincennes Railroad Company, and became, and was then and there, and from thence hitherto has been and still is a corporation in the State of Indiana as well as in the State of Illinois; and as such corporation of the State of Indiana was authorized to construct, maintain, and operate a line of railroad extending from the boundary-line between the States of Indiana and Illinois, at a point in Warren County, southwardly through the counties of Warren, Fountain, Parke, and Clay, to the town

of Brazil in said last-named county, with branches to coal-mines, and other appurtenances;

And it further appearing to the court that thereafter, and on the 12th day of March, A. D. 1872, the said consolidated corporation, for the purpose of providing means to construct and equip the line of said company in Indiana, caused to be executed fifteen hundred (1,500) bonds, each for the sum of one thousand dollars, payable on the first day of April in the year nineteen hundred and twelve (1912), with interest at the rate of seven (7) per cent. per annum, both principal and interest payable in American gold coin, which said bonds were numbered from 2501 to 4000, inclusive, and were of the same form as the said Illinois division bonds, and had similar coupons attached;

And it further appearing to the court that for the purpose of securing the payment of said Indiana division bonds, the said railroad company on the said 12th day of March, A. D. 1872, executed and delivered to the complainants, William R. Fosdick and James D. Fish, as trustees, its certain mortgage or deed of trust, in and by which the said railroad company conveyed to the said trustees all and singular the entire railroad of said railroad company, situate, lying, and being in the State of Indiana, commencing on the boundary-line between the States of Illinois and Indiana, in the township of Marshfield, and county of Warren, in the State of Indiana, at the point where it connects with the road of the said company terminating on the eastern boundary-line of the State of Illinois, in the town of Ross, in Vermillion County, in said last-named State, and distant about ten
137 miles southeasterly from the village of Rossville, extending thence in a southeasterly direction to Covington, in Fountain County, thence southerly to Montezuma, in Parke County, and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad; also, a branch road, extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to the village of Newburgh, in said county, the entire length of road being about eighty miles; and also all such additional branch roads as said railroad company might thereafter construct, for the purpose of extending its tracks into the coal and mining regions in the vicinity of said main lines of road, with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said company then had or owned and possessed, or might thereafter acquire, either in law or equity, of every kind whatever appurtenant thereto;

And it further appearing to the court that the said trust deed was thereafter, and during the month of March, A. D. 1872, duly recorded in each of the counties of Warren, Fountain, Parke, and Clay, in the State of Indiana, and then and there thereby became and was, and still is, a first lien upon all of the railroad, property, franchises, and appurtenances in said trust deed described;

And it further appearing to the court that of the said fifteen hundred bonds there had been issued and sold, prior to the filing of the bill in this cause, twelve hundred and forty-three (1243) thereof, and that the remaining two hundred and fifty-seven (257) of said fifteen hundred

bonds had been issued and pledged as collateral to certain floating indebtedness of said company, and that all of the said fifteen hundred bonds, and the coupons thereto attached, are still outstanding and secured by the said last-mentioned trust-deed;

And it further appearing to the court that thereafter, and on the 24th day of April, A. D. 1872, the said railroad company executed and delivered to the said complainants, as trustees, a certain mortgage or trust-deed, of that date, in and by which the said railroad company then and there conveyed to the said complainants, for the purpose of more fully securing and assuring the punctual payment of the said two millions five hundred thousand dollars of bonds hereinbefore mentioned as numbered from one (1) to twenty-five hundred (2500), both inclusive, dated March 10th, 1869, and due April 1st, 1909, all and singular the entire division of the railroad of the said company, situate, lying, and being in the State of Indiana, commencing on the boundary line between the States of Illinois and Indiana,
138 in the township of Marshfield and county of Warren, in the State of Indiana, at the point where it connects with the road of the said company, terminating on the eastern boundary line of the State of Illinois, in the town of Ross, in Vermillion County, in said last-named State, and distant about ten miles southeasterly from the village of Rossville, extending thence in a southeasterly direction to Covington, in Fountain County, thence southerly to Montezuma, in Parke County, and thence southeasterly to Brazil, in Clay County, on the line of the Terre Haute and Indianapolis Railroad; also, a branch road extending from the main line before described, commencing at a point on said main line distant about three miles south from Covington, in Fountain County, and extending in an easterly direction to the village of Newburg, in said county, the entire length of road being about eighty miles; and also all such additional branch roads as said company might thereafter construct in the State of Indiana, for the purpose of extending its tracks into the coal and mining regions in the vicinity of said main lines of road, with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said company then had or owned and possessed, or might thereafter acquire, either in law or equity, of every kind whatever, appurtenant thereto;

And it further appearing to the court that in and by the said last-mentioned trust-deed the said railroad company, for the purpose of more fully securing and assuring the punctual payment of the said one million five hundred thousand dollars of bonds hereinbefore mentioned as numbered from twenty-five hundred and one (2501) to four thousand (4000), inclusive, dated March 12th, 1872, and due April 1st, nineteen hundred and twelve (1912), and the interest thereon, also conveyed to the said complainants, as trustees, all and singular the entire railroad of the said company, lying, being, and extending from its terminus, in the city of Chicago, in Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois, and Vermillion, to the city of Danville, being in length about one hundred and thirty miles, with all its franchises, equipments, property, tolls, issues, and profits, and all its lands, tenements, buildings, fixtures, machinery, goods, and chattels, connected with or used in the using or operating of said railroad, or ap-

purtenant thereto, and all its rails, ties, fuel, fencing, and erections, and all its rights of way and easements, and all cars, engines, and tools, and all rents, reservations, and reversions of every nature and kind whatever, including all the property between said terminal points which said company then had or owned and possessed, or might thereafter acquire, either in law or equity, of every kind whatever, appurtenant thereto;

139 And it further appearing to the court that the said trust deed was duly delivered to said trustees and accepted by them as further security for the uses and purposes therein expressed, and that it then and there became and was a second lien upon all of the said railroad, property, franchises, and appurtenances in the State of Indiana in the said deed described, as security for the payment of the said twenty-five hundred bonds, numbered from one (1) to twenty-five hundred (2500), both inclusive, and that the said mortgage then and there became and was a second lien on the line of railroad of said company in the State of Illinois, and the franchises and appurtenances thereof, as in the said trust-deed described, as security for the payment of the said fifteen hundred bonds numbered from twenty-five hundred and one (2501) to four thousand (4000), both inclusive, except as provided by the last clause of said deed, which was and is as follows:

"The foregoing grants, conveyances, and covenants in this indenture contained, are made and entered into by the Chicago, Danville and Vincennes Railroad Company, party of the first part hereto, upon the express understanding, agreement, and condition that in case the party of the first part, or its successors or assigns, shall deem it necessary or desirable, at any future time, in consequence of an increase of the traffic of the said railroad, to issue and dispose of any amount of bonds, or other evidences of indebtedness, for the purpose of providing the means for the purchase of additional rolling-stock and equipment for the use of said railroad, or of said company, its successors or assigns, or for the improvement of said railroad or property, that then, and in that case, the said Chicago, Danville and Vincennes Railroad Company, its successors or assigns, may secure the payment of the principal and interest of such bonds or other evidences of indebtedness so issued and disposed of, by mortgage upon all the roads and property of said company hereinbefore mentioned and described, and that such mortgage, when so made and executed, shall constitute and be and become a lien upon all said roads and property prior to and having precedence of the liens hereinbefore provided for by this instrument;"

And it further appearing to the court that of the lines of railroad in said several mortgages described, there had been constructed and put in use by the said company within the State of Illinois at the time of the filing of the bill in this cause, that portion of the line commencing at Dalton, about twenty (20) miles south of the city of Chicago, and running thence southerly to Danville, in the county of Vermillion, a distance of one hundred and eight (108) miles, with a branch from Bismarck (a point on the main line in said Vermillion County), southeasterly to the line between the States of Indiana and Illinois, a distance of four and six-tenths ($4\frac{6}{10}$) miles, and that there was also owned and operated by said company terminal tracks and sidings within and near the city of Chicago, of the aggregate length of seven and eighty one-hundredths miles ($7\frac{80}{100}$), with the appurtenances thereto, making a total length of line in the State of Illinois of about one

140 hundred and twenty and four-tenths ($120\frac{4}{10}$) miles, and that said company has acquired for the uses and purposes of said railroad and the operation thereof, within the said city of Chicago, the south

eighteen (18) feet of lot twelve (12), lot thirteen (13), and lot sixteen (16) in block thirteen (13), and lot six (6) in block nine (9), Carpenter's addition to Chicago; lot twenty-four (24) in block seven (7), Carpenter's addition, subject to an encumbrance of twenty-five hundred (2,500) dollars, lots twenty-nine (29), thirty (30), and thirty-two (32), in block (4), Magie and High's addition to Chicago, with six hundred and eighty (680) feet of the tracks hereinbefore mentioned, situated thereon, and also with an engine-house thereon; said lots twenty-nine (29), thirty (30), and thirty-two (32) being subject to an encumbrance of about twenty-three hundred (2,300) dollars, and also a leasehold interest in lot thirty-one (31) in said block four (4), Magie and High's addition to Chicago; the remaining tracks within said city being upon ground not owned by said company, but which it has the right to occupy under contract, and that the tracks near said city hereinbefore mentioned are three and five one-hundredths miles in length, and situate on the right of way of the Chicago and Southern Railroad Company, under contract with it;

And it further appearing to the court that the said Chicago, Danville and Vincennes Railroad also owns an undivided interest in an engine-house of fourteen (14) stalls, situate on the grounds of the said Chicago and Southern Railroad Company at Corwith, adjacent to the city of Chicago, also a water-tank on the ground of said Chicago and Southern Railroad Company near the Chicago River, and that the said company also uses the tracks of the Chicago and Southern Railroad Company, and of the Pittsburg, Cincinnati & S't Louis Railway Company from Thornton, near the terminus of its line, to its terminal tracks in Chicago, under contracts with said companies severally; and that all of the line so constructed and in operation within the said State of Illinois, together with the contract rights of said company in the use of the tracks of the said Chicago and Southern Railroad Company, and the said Pittsburgh, Cincinnati and S't Louis Railway Company from said Thornton to Chicago, constitute the Illinois division of the said railroad, and with the franchises, property, and appurtenances thereof, and its rolling-stock, tools, and fixtures, was and is all included within and a part of the premises conveyed to said complainants as trustees by the said trust-deed, dated March 10th, 1869, and that the said trust-deed is a first lien thereon as security for the payment of the bonds and coupons therein and hereinbefore mentioned and described;

And it further appearing to the court that the said company, at the time of the filing of said bill, had constructed and put in operation its line of road from a point on the State-line between the States of Illinois and Indiana, where the Bismarck Branch of the Illinois division intersects the same, to Snoddy's Mills or Coal Creek, a distance of nineteen and five-tenths (19⅝) miles, with various branches to coal-mines aggregating one and sixty-three one-hundredths (1 63/100) miles in
141 length, and that the line of road from Snoddy's Mills to Montezuma, a distance of about eighteen (18) miles, is partly constructed, and the line from Montezuma to the Brazil coal-field, a distance of about twenty-five (25) miles, is nearly completed except track, and that about two miles of track was laid thereon, making total of twenty-three and thirteen one-hundredths miles of completed road, and forty-three (43) miles of partially completed road in the State of Indiana, and constituting the Indiana division of said railroad, which, together with the franchises, property, and appurtenances thereof, and its rolling stock, tools, and fixtures, was and is included within and a part of the premises conveyed to said complainants as trustees, by the said trust-deed of March 12th, 1872, and that said last-mentioned trust-deed is a

first lien thereon as a security for the payment of the said fifteen hundred bonds and the coupons thereof in said trust-deed described;

And it further appearing to the court that the said railroad company at the time of the filing of said bill owned and had in use a large amount of rolling-stock upon the said line of railroad in the States of Indiana and Illinois, all of which was and is covered by and described in the said several mortgages, and that of the said rolling-stock the portion belonging to the said Illinois division, and now in the possession of the receiver appointed in this case, is as follows:

Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33, and 34.

Six (6) passenger-cars, numbered 3, 4, 5, 6, 7, and 8.

Three (3) baggage-cars, numbered 2, 3, and 4.

Three (3) mail-cars, numbered 1, 3, and 4.

Eight (8) caboose-cars, numbered 3, 4, 5, 6, 7, 8, 9, and 10.

One hundred and sixty-one (161) box-cars, being those bearing numbers between 564 to 615, both inclusive, and 1,001 to 1,115, both inclusive.

Eighty-five (85) box-cars (Adams), numbered 1,136 to 1,220, both inclusive.

Three hundred and eighteen (318) coal-cars, being those bearing numbers between 1 to 100, both inclusive, and between 145 to 376, both inclusive.

One hundred and eighteen (118) block coal-cars, being those bearing numbers between 01 to 0119, both inclusive.

Thirty-four (34) stock-cars, being those bearing numbers between 501 to 534, both inclusive;

And it further appearing to the court that the said railroad company has paid all of the coupons which became due on the said Illinois and Indiana division bonds, up to and including those which fell due on the first of April, A. D. 1873, and that none of the coupons which have matured since that time have been paid;

And it further appearing to the court that after said railroad company had made default in the payment of the coupons of the said
142 bonds maturing October 1st, 1873, and, to wit, on the 11th day of November, 1873, the said railroad company issued a circular to its bondholders, in and by which it proposed that the holders of bonds should deposit with complainant, William R. Fosdick, as trustee, the coupons due October 1st, 1873, April 1st, 1874, October 1st, 1874, and April 1st, 1875, and receive in exchange therefor the convertible bonds of said railroad company, dated January 1st, 1873, payable February 1st, 1893, bearing interest at seven (7) per cent. per annum, with coupons payable the 1st of February and August of each year, principal and interest in gold; said bonds to bear interest from February 1st, 1874, and to be received by the bondholders at seventy-five (75) per cent. of their par value; also scrip certificates bearing interest the same as the bonds to be issued for fractional sums, and exchangeable for the convertible bonds, when presented in sums of five hundred (500) or one thousand (1,000) dollars; the coupons thus deposited in trust to be held by the trustee until October 1st, 1876, after which the coupons to be canceled by the trustee and surrendered to the company, but in case of non-payment of any coupons coming due up to October 1st, 1876, the coupons deposited with the trustee were to be surrendered to the original owners upon the return of the second-mortgage bonds, or scrip certificates which had been issued for them;

And it further appearing to the court that in response to said proposition the holders of two hundred and seventy-one thousand five hun-

dred dollars ($271,500) of said Illinois bonds, placed in the hands of said Fosdick, as trustee, the coupons thereof, which fell due October 1st, 1873, to April 1st, 1875, inclusive, and received therefor convertible bonds, at seventy-five cents on the dollar, and scrip certificates of fractional sums less than five hundred ($500) dollars, and that the holders of forty-two thousand five hundred dollars ($42,500) of said Indiana bonds placed in the hands of said Fosdick, as trustee, the coupons thereof which fell due October 1st, 1873, to April 1st, 1875, inclusive, and received therefor convertible bonds, at seventy-five cents on the dollar, and scrip certificates for fractional sums less than five hundred dollars ($500), and that the total amount of convertible bonds issued for the coupons from the Illinois bonds and the Indiana bonds was the sum of fifty-six thousand dollars ($56,000), and of scrip certificates the sum of three thousand four hundred and seventy-nine dollars and ninety-three cents ($3,479.93);

And it further appearing to the court that thereafter and on or about the 20th of November, 1873, the said railroad company issued to its said bondholders another circular, which proposed the following scheme: That the bondholders should deposit the four coupons, from October 1st, 1873, to April 1st, 1875, inclusive, with complainant, William R. Fosdick, as trustee, and should receive in exchange therefor certificates of indebtedness, payable in five (5) years from February 1st, 1874, with interest payable semi-annually, on the first days of February and
August of each year, principal and interest payable in gold, the
143 coupons to be held by the trustee until after the maturity of the certificates of indebtedness on the 1st of February, 1879, when they were to be canceled by said trustee and surrendered to the company; but in case of the non-payment of the interest or the principal of the certificates at maturity, or of the coupons on the first-mortgage bonds between October 1st, 1875, and February 1st, 1879, both inclusive, then the coupons were to be returned to the original owners, upon surrender of the certificates, with all their original rights to proceed against the company unimpaired;

And it further appearing to the court that the holders of one million five hundred and thirty thousand dollars ($1,530,000) of the said Illinois bonds placed in the hands of the said Fosdick, as trustee, the four coupons therefrom, mentioned in said circular, and received therefor certificates of indebtedness of said company of the form, tenor, and effect described in said circular, aggregating in amount the sum of two hundred and fourteen thousand two hundred and ten dollars ($214,210), and that the holders of nine hundred and fifty-seven thousand five hundred dollars ($957,500) of said Indiana bonds placed in the hands of said Fosdick, as trustee, the four coupons thereof mentioned in said circular, and received therefor certificates of indebtedness of said company to the aggregate amount of one hundred and thirty-four thousand and fifty dollars ($134,050);

And it further appearing to the court that all of the said coupons still remain in the hands of said Fosdick as trustee as aforesaid;

And it further appearing to the court that the semi-annual interest which fell due August 1st, 1874, upon the said convertible bonds and scrip certificates, and certificates of indebtedness so issued as aforesaid, was paid by the said company, and that the semi-annual interest which fell due on the 1st day of February, 1875, on the said convertible bonds, scrip certificates, and certificates of indebtedness, was duly paid by said company upon all of the same which were presented for payment, which was the first great bulk thereof, and that no interest has been paid on the same or any part thereof since that time;

And it further appearing to the court that the amount of interest paid as aforesaid, August 1st, 1874, upon the said coupons so funded as aforesaid, for which scrip certificates or certificates of indebtedness had been issued as aforesaid, was the sum of one dollar and twenty-two and one-half cents ($1.22½) in gold upon each coupon, and that the same amount per coupon was paid upon all of the scrip certificates and certificates of indebtedness presented for payment February 1st, 1875, and thereafter, and that each of said coupons so funded as aforesaid, for which the said convertible bonds were received at seventy-five cents on the dollar as aforesaid, and upon which said semi-annual interest was paid as aforesaid, August 1st, 1874, received a payment of one dollar and sixty-three and one-third cents ($1.63⅓) in gold per coupon, and that the same amount per coupon was paid on all of said convertible bonds issued in lieu of funded coupons, which were presented for payment February 1st, 1875, and thereafter;

144 And it further appearing to the court that of the said twenty-five hundred Illinois bonds there is outstanding the sum of six hundred and ninety-eight thousand five hundred dollars ($698,500) thereof, from which the said four coupons falling due October 1st, 1873, to April 1st, 1875, inclusive, have never been funded under either of the schemes aforesaid, and upon which coupons no payments whatever have been made since the payment of the coupon due April 1st, 1873, and that of the said fifteen hundred Indiana bonds there is outstanding the sum of five hundred thousand dollars ($500,000), from which the said four coupons falling due October 1st, 1873, to April 1st, 1875, inclusive, have never been funded under either of the schemes aforesaid, and upon which no payments whatever have been made since the payment of the coupon which fell due April 1st, 1873;

And it further appearing to the court that in and by the said trust-deeds, and each of them, it was and is, among other things, provided that if default should be made by the said railroad company in the payment of any half-year's interest on any of said bonds in said several trust-deeds described, and the warrant or coupon for such interest shall have been presented, and its payment demanded, and such default shall have continued six months after such demand, without the consent of the holder of such coupon or bond, then and thereupon the principal of all of the said bonds by said trust-deeds severally secured should be and become immediately due and payable, anything in such bonds to the contrary notwithstanding; and the said trustees might so declare the same, and notify the said railroad company thereof, and upon the written request of the holders of a majority of the said bonds then outstanding, should proceed to collect both principal and interest of all such bonds outstanding, by foreclosure and sale of said property or otherwise;

And it further appearing to the court that heretofore, and on the 26th day of February, A. D. 1875, the said complainants, as trustees under the said mortgage or trust-deed to them, dated March 10th, 1869, did declare the principal of the said twenty-five hundred Illinois division bonds to be due and payable by reason of the default of said railroad company in the payment of certain of the coupons of said bonds which fell due October 1st, 1873, payment of which had been duly demanded, and the continuance of such default for more than six months after such demand;

And it further appearing to the court that in and by said trust-deeds, and each of them, it was and is, among other things, provided that in case of sale of the property, railroad, and franchises, in said trust-deeds severally described, the purchase-money should be applied as follows:

After deducting from the proceeds of such sale the expenses of the sale and conveyance, and all advances or liabilities which may have been made or incurred by the said trustees in operating and con-
145 trolling and maintaining the said railroad and property, and in managing its business and affairs while in possession, and all payments for taxes, charges, and assessments on said premises, or any part thereof, as well as reasonable compensation for their own services, to apply the proceeds of such sale to the payment of the interest of said two millions and five hundred thousand dollars of bonds, or so many of them as shall have been issued by said party of the first part, and be then outstanding, pro rata, until all such interest shall be paid, and afterwards to apply the remainder to the payment of the principal of said bonds, pro rata, until such principal shall be paid; and if any surplus remain after paying all of said matters, to pay such surplus to the party of the first part;

And it further appearing to the court that upon the bill filed in this cause, and in pursuance of the prayer therein of the said complainants as trustees, a receiver has been heretofore appointed by this court, and that all of the property, railroad, and franchises within the State of Illinois, and in the said several mortgages or trust-deeds described, has been taken possession of by such receiver, under the order of this court, and has been since that time managed, controlled, operated, and held possession of by him under the orders of this court;

And it further appearing to the court that there is now due and owing by the said defendant, the Chicago, Danville and Vincennes Railroad Company, to the said complainants, as trustees in the said Illinois division mortgage-deed:

First. The sum of eighty-seven thousand five hundred dollars ($87,500), in gold coin, for the coupons of the said twenty-five hundred (2,500) Illinois division bonds, which fell due on the 1st day of October, A. D. 1873, with interest thereon from and after the said last-mentioned day at the rate of six (6) per cent. per annum, in gold, less such sums as have heretofore been paid upon certain of said coupons under the funding arrangements hereinbefore set forth;

Second. In the further sum of eighty-seven thousand five hundred dollars ($87,500), in gold coin, for the coupons of the said Illinois division bonds, which fell due on the 1st day of April, A. D. 1874, with interest thereon from and after the said last-mentioned day at six per cent. per annum, in gold, less such sums as have heretofore been paid upon certain of said coupons under the funding arrangements hereinbefore stated;

Third. In the further sum of eighty-seven thousand five hundred dollars ($87,500), in gold coin, for the coupons of the said Illinois division bonds, which fell due on the 1st day of October, A. D. 1874, with interest from and after said last-mentioned day at six per cent. per annum, in gold, less such sums as have heretofore been paid upon certain of said coupons under said funding schemes;

Fourth. In the further sum of eighty-seven thousand five hundred dollars ($87,500), in gold coin, for the coupons of the said Illinois division bonds, which fell due on the 1st day of April, A. D. 1875,
146 with interest from and after the said last-mentioned day at six per cent. per annum, in gold, less such sums as have heretofore been paid upon certain of said coupons under said funding schemes;

Fifth. In the further sum of eighty-seven thousand five hundred dollars ($87,500), in gold coin, for the coupons of the said Illinois division bonds, which fell due on the 1st day of October, A. D. 1875, with

interest thereon from and after said last-mentioned day at the rate of six per cent. per annum, in gold;

Sixth. In the further sum of eighty-seven thousand five hundred dollars ($87,500), in gold coin, for the coupons of the said Illinois division bonds, which fell due on the 1st day of April, A. D. 1876, with interest thereon from and after said last-mentioned days at the rate of six (6) per cent. per annum, in gold;

Seventh. In the further sum of eighty-seven thousand five hundred dollars ($87,500), for the coupons of the Illinois division bonds, which fell due on the 1st day of October, A. D. 1876, with interest thereon from and after said last-mentioned day, at the rate of six (6) per cent. per annum, in gold;

Eighth. And in the further sum of two million five hundred thousand dollars ($2,500,000), in gold coin, for the principal of the said Illinois division bonds, so declared to be due as aforesaid, together with interest thereon from and after the first day of October, A. D. 1876, at the rate of seven (7) per cent. per annum, in gold;

And that the said several sums of money, with the interest thereon, are due and owing in the order in which they are hereinbefore stated and set forth:

Now, therefore, it is hereby ordered, adjudged, and decreed that the said defendant, the Chicago, Danville & Vincennes Railroad Company, pay, or cause to be paid, to the said complainants, as trustees for the holders of the said Illinois division bonds and coupons, the said several sums of money, with interest thereon, as hereinbefore found to be due and owing, within twenty (20) days from and after the entry of this decree, and in default thereof, that all of the said railroad, premises, property, and franchises, described in the said trust-deed, dated March 10th, A. D. 1869, and hereinbefore described as the Illinois division of said railroad, together with all the rights, franchises, property, and appurtenances thereof, and the rolling-stock thereto belonging, and herein particularly scheduled and set forth, and all the contract-rights of said company for the use of tracks of other railroads between Thornton and Chicago, and all other rights, privileges, and appurtenances of the said Illinois division of said railroad, as the same is hereinafter specifically scheduled, and all the right, title, interest, and equity of redemption of the said Chicago, Danville & Vincennes Railroad Company therein, shall be sold as an entirety by Henry W. Bishop, the master in chancery of this court, at public auction, to the highest and best bidder for cash therefor, payable as hereinafter provided, at the west door of the Republic Life-Insurance Company building, in the city of Chicago, in the State of Illinois, after having first given notice of the time and place, and terms of sale, and a description of the property to be sold by
147 advertisement thereof in some public newspaper published in the city of Chicago, for the space of thirty (30) days prior to such day of sale.

The terms of such sale shall be as follows:

Twenty-five (25) per cent. of the purchase-money to be paid to said master in chancery in cash, at the time of sale. One-half of the balance of the purchase-money to be paid to said master, in cash, within three months from the day of sale, and the remainder to be paid to said master, in cash, within six months from said day of sale.

And it is further ordered, adjudged, and decreed that the said master make report of said sale to this court, and that upon confirmation thereof, and the full payment of the whole of the purchase-money, that the said Bishop, as master in chancery of this court, shall convey to the pur-

chaser or purchasers, at such sale, all of the said railroad, premises, property, appurtenances, and franchises sold, by a good and sufficient deed therefor, which said deed, when so made and delivered, shall vest in the grantee all the right, title, estate, interest, property and equity of redemption of the said railroad company, of, in, and to the said railroad, property, premises, appurtenances, and franchises, in fee-simple forever, and shall entitle said grantee to the possession thereof, and shall be a perpetual bar, both in law and equity, against any and every claim of the said railroad company, and its successors or assigns, and against all and every person or corporation claiming or to claim the said railroad, premises, property, appurtenances, and franchises, or any part thereof, under or through the said railroad company, forever.

And it is further ordered, adjudged, and decreed that the receiver heretofore appointed in said cause, and now in possession of the said railroad, property, premises, appurtenances, and franchises, shall, upon presentation to him of the said deed, deliver to the grantee or grantees therein named all the railroad, property, premises, appurtenances, and franchises therein described.

And it is further ordered, adjudged, and decreed that in case the purchaser or purchasers at such sale shall fail to make prompt payment of the whole of said purchase-money, according to the terms and conditions of said sale, as hereinbefore specified, the said master shall report the same to the court, and thereupon the said sale shall be null and void, and the said purchaser shall of the said purchase-money forfeit an amount equal to the sums of money disbursed by said master out of said purchase-money, under the provisions of this decree, not including the amount paid over to the clerk of this court under the provisions of this decree.

And it is further ordered, adjudged, and decreed that the said master shall, out of the proceeds of such sale,

First. Pay all the costs of said suit, and the costs and expenses of such sale, including the fees of said master;

148 Second. Pay all expenses and compensation of the said complainants, as trustees of the said bond and coupon holders, including attorneys' fees incurred in the course of their trust, and in the prosecution or defense of any and all suits brought by or against them, as trustees, which shall be allowed by or under the order of this court, and also all other costs and attorneys' fees which shall be allowed by or under the order of this court, in favor of the parties to this suit, or intervening petitioners therein;

Third. Pay the balance to the clerk of this court.

And it is further ordered, adjudged, and decreed that the said William R. Fosdick, on or before the confirmation of said sale, deliver to the clerk of this court all of the said Illinois division coupons deposited with him as trustee as aforesaid, for which either convertible bonds, scrip certificates, or certificates of indebtedness have been issued under the funding schemes hereinbefore set forth, with a full statement of the names of the depositors of the said several coupons, and the new obligations of said company issued therefor, so far as the same is within the knowledge of said Fosdick; and that the clerk of said court shall, upon receipt thereof, deliver to said Fosdick a certified copy of this decree, with an endorsement thereon, stating the receipt of said coupons by him, and the said Fosdick shall be thereupon released from any further duty or liability as trustee of said coupons.

And it is further ordered, adjudged, and decreed that the said clerk, out of the moneys so paid to him by said master, as aforesaid, shall,

First. Pay all the liabilities of the Illinois division of said railroad incurred by the receiver in this cause by or under the order of this court, including the compensation of said receiver, and all claims against said railroad company which said receiver has been or shall be required to pay by order of this court, which shall remain unpaid after the application thereto of all moneys in the hands of said receiver at the time of the confirmation of the sale hereinbefore provided for;

Second. Out of the surplus, said clerk shall pay in gold, pro rata, the coupons of said Illinois division bonds which fell due October 1st, 1873, with interest from that date to the day of sale, at the rate of six per cent. per annum, after having first applied on all the funded coupons the moneys received thereon, severally, under said funding schemes, as of the date when such payments were made;

Third. Said clerk shall, out of the surplus, if any, pay in gold, pro rata, the coupons of said Illinois division bonds which fell due April 1st, 1874, with interest from that date to the day of sale, at the rate of six per cent. per annum, after having first applied on all the funded coupons the moneys received thereon, severally, under said funding schemes, as of the date when such payments were made;

Fourth. Out of the surplus, if any, said clerk shall pay in gold, pro rata, the coupons of said Illinois division bonds which fell due
149 October 1st, 1874, with interest from that date to the day of sale, at the rate of six per cent. per annum, after having first applied on all of the funded coupons the moneys received thereon, severally, under said funding schemes, as of the date when such payments were made;

Fifth. Out of the remaining surplus, if any, the said clerk shall pay in gold, pro rata, the coupons of said Illinois division bonds which fell due April 1st, 1875, with interest from that date to the day of sale, at the rate of six per cent. per annum, after having first applied on all the funded coupons the moneys received thereon, severally, under said funding schemes, as of the date when such payments were made;

Sixth. Out of the remaining surplus, if any, said clerk shall pay in gold, pro rata, the coupons of said Illinois division bonds which fell due October 1st, 1875, with interest from that date to the day of sale, at the rate of six per cent. per annum;

Seventh. Out of the remaining surplus, if any, the said clerk shall pay in gold, pro rata, the coupons of said Illinois division bonds which fell due April 1st, 1876, with interest from that date to the day of sale, at the rate of six per cent. per annum;

Eighth. Out of the remaining surplus, if any, the said clerk shall pay in gold, pro rata, the coupons of the said Illinois division bonds which fell due October 1st, 1876, with interest from that date to the day of sale, at the rate of six per cent. per annum;

Ninth. Out of the remaining surplus, if any, the said clerk shall pay in gold, pro rata, all of the said Illinois division bonds, with interest from the said first day of October, A. D. 1876, to the day of sale, at the rate of seven per cent. per annum.

Tenth. If any surplus shall remain after deducting from the amount paid by said master to said clerk the aggregate of all the payments hereinbefore directed to be made by said clerk, the said clerk shall report the same to the court for further order in this behalf.

Schedule of premises and property to be sold by Henry W. Bishop, as master in chancery, as hereinbefore provided.

1. The main line of the Chicago, Danville and Vincennes Railroad,

from Dalton, in the county of Cook, southerly to Danville, in the county of Vermillion, a distance of one hundred and eight (108) miles; and a branch line from Bismarck, in said Vermillion County, southeasterly to the east line of the State of Illinois, a distance of four and six-tenths ($4\frac{6}{10}$) miles, together with the right of way, station and other grounds, grading, bridges, culverts, tracks, shops, including fixtures and tools, stations, and other buildings and structures, fences, and appurtenances thereof, and all wood, coal, and other supplies for the use and operation thereof.

2. The contract rights of the said Chicago, Danville and Vincennes Railroad Company to the use of the tracks and appurtenances of the Chicago and Southern Railroad Company, and the tracks and appurtenances of the Pittsburgh, Cincinnati and S't Louis Railway Company from Thornton, in Cook County, to and into the city of Chicago.

3. The terminal tracks, sidings, switches, and appurtenances of said Chicago, Danville and Vincennes Railroad Company at and near said city of Chicago, whether the same are situate on the grounds and rights of way of said company, or otherwise, aggregating a length of seven and eight-tenths ($7\frac{8}{10}$) miles, together with all rights of way or contracts therefor, or rights to have and maintain such tracks, or any part thereof, and all buildings, structures, erections, and appurtenances thereof, including a water-tank, and an undivided interest in an engine-house of fourteen (14) stalls, situate on grounds of the said Chicago and Southern Railroad Company adjacent to the city of Chicago, and all wood, coal, and other supplies, tools, and fixtures for the use of said Chicago, Danville and Vincennes Railroad Company, and situate or used within said city of Chicago, or along the line of said Chicago and Southern Railroad Company, or said Pittsburgh, Cincinnati and S't Louis Railway Company, north of said Thornton.

4. The south eighteen (18) feet of lot twelve (12), and lots thirteen (13) and sixteen (16), in block thirteen (13), Carpenter's addition to Chicago; also lot twenty four (24), in block seven (7), Carpenter's addition to Chicago.

Lots twenty-nine (29), thirty (30), and thirty-two (32), and a leasehold interest in lot thirty-one (31), all in block four (4), Magill & High's addition to Chicago, with the tracks and buildings and fixtures thereon, said lots thirty (30) and thirty-two (32) being subject to a first lien of about seven hundred dollars ($700).

5. Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33, and 34.

Six (6) passenger-cars, numbered 2, 4, 5, 6, 7, and 8.

Three (3) baggage-cars, numbered 2, 3, and 4.

Three (3) mail-cars, numbered 1, 3, and 4.

One hundred and sixty-one (161) box-cars, being those bearing numbers between 564 to 615, both inclusive, and 1091 to 1115, both inclusive.

Eighty five (85) box-cars (Adams), being those bearing numbers between 1136 to 1200, both inclusive.

Three hundred and eighteen (318) coal-cars, being those bearing numbers between 1 to 100, both inclusive, and 145 to 376, both inclusive.

One hundred and eighteen (118) block coal-cars, being those bearing numbers between 01 to 0118, both inclusive.

Thirty-four (34) stock-cars, being those bearing numbers between 501 to 534, both inclusive.

6. All of the franchises of the said Chicago, Danville and Vincennes Railroad Company within the State of Illinois, and all of the property and premises within said State other than that in this schedule specifically described in which the said railroad company has any interest held by it for use in the maintenance and operation of the said line of railroad.

151 2. The contract rights of the said Chicago, Danville and Vincennes Railroad Company to the use of the tracks and appurtenances of the Chicago and Southern Railroad Company, and the tracks and appurtenances of the Pittsburgh, Cincinnati and S't Louis Railway Company from Thornton, in Cook County, to and into the city of Chicago.

3. The terminal tracks, sidings, switches, and appurtenances of said Chicago, Danville and Vincennes Railroad Company at and near said city of Chicago, whether the same are situate on the grounds and rights of way of said company or otherwise, aggregating a length of seven and eight-tenths (7_{10}) miles, together with all rights of way or contracts therefor, or rights to have and maintain such tracks, or any part thereof, and all buildings, structures, erections and appurtenances thereof, including a water tank, and an undivided interest in an engine-house of fourteen (14) stalls situate on grounds of the said Chicago and Southern Railroad Company, adjacent to the city of Chicago, and all wood, coal, and other supplies, tools and fixtures, for the use of said Chicago, Danville and Vincennes Railroad Company, and situate or used within said city of Chicago, or along the line of said Chicago and Southern Railroad Company, or said Pittsburgh, Cincinnati and S't Louis Railway Company, north of said Thornton.

4. The south eighteen (18) feet of lot twelve (12), and lots thirteen (13) and sixteen (16) in block thirteen (13), and lot six (6) in block nine (9), Carpenter's addition to Chicago; also lot twenty-four (24) in block seven (7), Carpenter's addition to Chicago, subject to a lien of about twenty-five hundred (2,500) dollars.

Lots twenty-nine (29), thirty (30), and thirty-two (32), and a leasehold interest in lot thirty-one (31), all in block four (4), Magie & High's addition to Chicago, with the tracks and buildings and fixtures thereon, said lots twenty-nine (29), thirty (30), and thirty-two (32) being subject to a first lien of about twenty-three hundred dollars ($2,300).

5. Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33, and 34.

Six (6) passenger-cars, numbered 3, 4, 5, 6, 7, and 8.

Three (3) baggage-cars, numbered 2, 3, and 4.

Three (3) mail-cars, numbered 1, 3, and 4.

Eight (8) caboose-cars, numbered 3, 4, 5, 6, 7, 8, 9, 10.

One hundred and sixty-one (161) box-cars, being those bearing numbers between 564 to 615 both inclusive, and 1,001 to 1,115, both inclusive.

Eighty-five (85) box-cars (Adams), being those bearing numbers between 1,136 to 1,220, both inclusive.

Three hundred and eighteen (318) coal-cars, being those bearing numbers between 1 to 100, both inclusive, and 145 to 376, both inclusive.

One hundred and eighteen (118) block coal-cars, being those bearing numbers between 01 to 0118, both inclusive.

152 Thirty-four (34) stock-cars, being those bearing numbers between 501 to 534, both inclusive.

6. All of the franchises of the said Chicago, Danville and Vincennes

Railroad Company within the State of Illinois, and all of the property and premises within said State other than that in this schedule specifically described in which the said railroad company has any interest, held by it for use in the maintenance and operation of the said line of railroad.

And the defendants, The Chicago, Danville and Vincennes Railroad Company and James W. Elwell, and each for itself and himself, separately pray an appeal from the whole of said decree to the Supreme Court of the United States, which the court doth grant upon the filing of a bond, within sixty days from the entry hereof, in the sum of fifteen hundred dollars, with surety to be approved by the court.

And it is further ordered that upon said defendants filing of a bond, with sureties to be approved by the court as aforesaid, in the penal sum of five hundred thousand dollars, that the filing of said bond shall operate as a supersedeas, and all further proceedings under said decree be stayed, as by the law in such cases provided.

153 Afterwards, to wit, on the 16th day of April, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Thomas Drummond, judge, is the following entry, to wit:

WILLIAM R. FOSDICK AND JAMES D. FISH
v.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company et al. } In chancery.

The report of Henry W. Bishop, esq., master in chancery, having been filed, reporting the surrender to him of two thousand three hundred and twenty-eight (2,328) bonds, and the coupons and certificates in said report mentioned, and the form and execution by him of a deed to Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, in pursuance of a decree entered in this cause on December fifth, A. D. 1876, and the further order or decree of this court entered herein on the twelfth day of April, A. D. 1877, and the said report having been examined and also said deed presented therewith, the said report and deed are hereby confirmed and approved, together with the reception by said master of the bonds, coupons, and certificates in said report mentioned, also approved and confirmed.

And the said deed is ordered to be entered of record, and is as follows, to wit:

154 This indenture, made the twelfth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, between Henry W. Bishop, as master in chancery of the circuit court of the United States for the northern district of Illinois, party of the first part, and Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, parties of the second part, witnesseth:

That whereas, by a decree duly entered of record on the fifth day of December, A. D. 1876, it was ordered, adjudged, and decreed by the circuit court of the United States for the northern district of Illinois, in a certain action therein pending, wherein William R. Fosdick and James D. Fish were complainants and the Chicago, Danville and Vincennes Railroad Company and others were defendants, that the Chicago, Danville and Vincennes Railroad Company should, within twenty days thereafter, pay or cause to be paid to William R. Fosdick and James D. Fish,

as trustees for first-mortgage bondholders, the certain sums of money which by said decree were adjudged to be due to such trustees, under a certain mortgage or deed of trust made, executed, and delivered by said company on the 10th day of March, A. D. 1869, and on the bonds issued thereunder; and it was further decreed that all of the said railroad property, premises, and franchises described in said mortgage or deed of trust, together with all the rights, franchises, property, and appurtenances thereof, and the rolling-stock thereto belonging, and hereinafter particularly scheduled and set forth, and all the right, title, interest, and equity of redemption of said Chicago, Danville and Vincennes Railroad Company, should be sold as an entirety by Henry W. Bishop, the master in chancery of said circuit court of the United States, at public auction, to the highest and best bidder therefor, on the terms
155 specified in said decree, at the west door of the Republic Life-Insurance Company building, in the city of Chicago, in the State of Illinois, after having first given notice of the time and place and terms of sale, and a description of the property to be sold, by advertisement thereof in some public newspaper published in the city of Chicago for the space of thirty days prior to such day of sale;

And whereas the said Chicago, Danville and Vincennes Railroad Company failed to pay the said sum of money adjudged by said decree as aforesaid to be due within the time ordered, and thereupon the said master in chancery, after having given due notice of the time, place, and terms of sale, and a description of the property to be sold, in accordance with the directions of the said decree, did, on the seventh day of February, A. D. 1877, offer for sale at public auction the said property, in pursuance of said notice, and thereupon Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison became the highest bidders therefor, at the sum of one million four hundred and fifty thousand dollars in gold, and were thereupon declared the purchasers thereof by said master; and the sale and bid having been reported by said master in chancery to the said court, and the said sale having been in all things confirmed by the said court, and the purchasers having fully complied with the terms of such decree, and the further decree of said court, dated April 12th, A. D. 1877, as to payments, and the said master having been ordered by the said further decree of said court to execute and deliver to such purchasers a conveyance of said property so sold and purchased by them as aforesaid:

Now, therefore, this indenture witnesseth that the said Henry W. Bishop, master in chancery of the circuit court of the United States for the northern district of Illinois, party of the first part, in order to carry into effect the said sale, so made as aforesaid, and in execution of the orders and decrees of said court requiring him to execute and deliver such conveyance, and in consideration of the premises and of the
156 payments made by the said parties of the second part, in accordance with the orders of the court, has sold, and by these presents does sell and convey, unto the said Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, parties of the second part, all and singular—

The main line of the Chicago, Danville and Vincennes Railroad from Dalton, in the county of Cook, southerly to Danville, in the county of Vermillion, a distance of one hundred and eight (108) miles; and a branch line from Bismarck, in said Vermillion County, southeasterly to the east line of the State of Illinois, a distance of four and six-tenths ($4\frac{6}{10}$) miles, together with the right of way, station and other grounds, grading, bridges, culverts, tracks, shops, including fixtures and tools,

stations and other buildings and structures, fences, and appurtenances thereof, and all wood, coal, and other supplies for the use and operation thereof.

The contract rights of the said Chicago, Danville and Vincennes Railroad Company to the use of the tracks and appurtenances of the Chicago and Southern Railroad Company, and the tracks and appurtenances of the Pittsburgh, Cincinnati and S't Louis Railway Company from Thornton, in Cook County, to and into the city of Chicago.

The terminal tracks, sidings, switches, and appurtenances of said Chicago, Danville and Vincennes Railroad Company at and near said city of Chicago, whether the same are situate on the grounds and rights of way of said company or otherwise, aggregating a length of seven and eight-tenths (7⅘) miles, together with all rights of way or contracts therefor, or rights to have and maintain such tracks, or any part thereof, and all buildings, structures, erections, and appurtenances thereof, including a water-tank, and an undivided interest in an engine-house of fourteen (14) stalls situate on grounds of the said Chicago and Southern Railroad Company, adjacent to the city of Chicago, and all wood, coal, and other supplies, tools and fixtures, for the use of said Chicago, Danville
157 and Vincennes Railroad Company, and situate or used within said city of Chicago, or along the line of said Chicago and Southern Railroad Company, or said Pittsburgh, Cincinnati and S't Louis Railway Company, north of said Thornton.

The south eighteen (18) feet of lot twelve (12), and lots thirteen (13) and sixteen (16) in block thirteen (13), and lot six (6) in block nine (9), Carpenter's addition to Chicago; also lot twenty-four (24) in block seven (7), Carpenter's addition to Chicago, subject to a lien of about twenty-five hundred (2,500) dollars.

Lots twenty-nine (29), thirty (30), and thirty-two (32), and a leasehold interest in lot thirty-one (31), all in block four (4), Magie & High's addition to Chicago, with the tracks and buildings and fixtures thereon, said lots twenty-nine (29), thirty (30), and thirty-two (32) being subject to a first lien of about twenty-three hundred dollars ($2,300).

Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33, and 34.

Six (6) passenger-cars, numbered 3, 4, 5, 6, 7, and 8.

Three (3) baggage-cars, numbered 2, 3, and 4.

Three (3) mail-cars, numbered 1, 3, and 4.

Eight (8) caboose-cars, numbered 3, 4, 5, 6, 7, 8, 9, and 10.

One hundred and sixty-one (161) box-cars, being those bearing numbers between 564 to 615, both inclusive, and 1001 to 1115, both inclusive.

Eighty-five (85) box-cars (Adams'), being those bearing numbers between 1136 to 1220, both inclusive.

Three hundred and eighteen (318) coal-cars, being those bearing numbers between 1 to 100, both inclusive, and 145 to 376, both inclusive.

One hundred and eighteen (118) block-coal cars, being those bearing numbers between 01 to 0118, both inclusive.

Thirty-four (34) stock-cars, being those bearing numbers between 501 to 534, both inclusive.

All of the franchises of the said Chicago, Danville and Vin-
158 cennes Railroad Company within the State of Illinois, and all of the property and premises within said State other than that in this schedule specifically described, in which the said railroad company has any interest, held by it for use in the maintenance and operation of the said line of railroad.

To have and to hold the said property with the appurtenances, rights, and franchises, and each and every part thereof, so sold and hereinbefore described, unto the said Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, their heirs and assigns. Meaning and intending hereby to convey to the said parties of the second part the above-described premises and franchises as fully and completely as the said party of the first part, the said master in chancery, by virtue of the said several decrees and orders of said circuit court, reference being hereby had thereto, can or could sell and convey the said premises, property, and franchises, subject to all taxes.

In witness whereof the said Henry W. Bishop, as master in chancery aforesaid, has hereunto set his hand and seal the day and year first above written.

HENRY W. BISHOP, [SEAL.]
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

159 STATE OF ILLINOIS,
Cook County, ss:

I, Edmund Gorvett, a notary public in and for said county, in the State aforesaid, do hereby certify that Henry W. Bishop, who is personally known to me to be the same person whose name is subscribed to the annexed deed of conveyance, appeared before me this day, in person, and acknowledged that he, as master in chancery of the circuit court of the United States for the northern district of Illinois, had signed, sealed, and delivered the said instrument of writing, as his free act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal this twelfth day of April, A. D. 1877.

[SEAL.] EDMUND GORVETT,
Notary Public.

160 Afterwards, to wit, on the 23d day of April, A. D. 1877, Henry W. Bishop, the master in chancery to whom this cause was referred, filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

Report of master.

In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
CHICAGO, DANVILLE, AMD VINCENNES RAILROAD COMPANY et al. } In chancery.

In the matter of the intervening petition of Southwestern Car Company.

I, Henry W. Bishop, master in chancery, to whom the above intervening petition was by order of court referred, do hereby report that on the 27th day of January, A. D. 1876, I was attended by Adna Anderson, the receiver, and Charles S. Millard as witnesses, and the counsel for the respective parties to said cause.

On or about the 24th day of February, A. D. 1876, I reported in writing to the court the facts as they were shown from the evidence taken,
161 which report was filed with the court at that time. After a careful search made by me among the papers in the cause I am unable

to find the same, and by request of the court I now make this supplemental report.

The facts of the case are as follows:

The Southwestern Car Company have a claim against the Chicago, Danville and Vincennes Railroad Company, one-tenth interest in one hundred box-cars built by said petitioner, said cars having been sold at the price of $550 each, and the interest of said petitioner being $55 in each car, or $5,500 in the one hundred cars. The cars were delivered to said railroad about the 11th day of January, 1875, said railroad company having entered into a contract with the Bristol and South Wales Railway Wagon Company for fifty of said cars, and William A. Adams for fifty more, by which it was provided that the title of said cars should not vest in said railroad company until the whole of the purchase-money had been paid. To enable the said parties to make such contract, the petitioners, who were the builders of said cars, surrendered their title to them. Eleven notes, for the sum of $500 each, dated January
162 15, 1875, were given by the railroad company, bearing interest at eight per cent. per annum, the first of said notes falling due April 15th, 1875, and one monthly thereafter until all were paid. None of said notes have been paid.

The price at which said cars were contracted for is shown to have been a reasonable one.

The petitioner is, as I understand, now willing to enter into an agreement to accept payment of its one-tenth of the purchase-money in sixty monthly instalments of $91.67 each, payments to commence as of July 1st, 1875, with interest on subsequent payments from that date at seven per cent. per annum, thus surrendering interest from January 15th, 1875, to July 1, 1875, and accepting seven in lieu of eight per cent. per annum.

I find that the said petitioner has also a claim against said railroad company for five box-cars, at $550, = $2,750.00; and ten coal-cars, at $450 each, = $4,500.00; total, $7,250.00.

Notes of said railroad company, fifteen in number, for the sum of $483.33 each, dated January 25, 1775, were given in payment of said claim, the first maturing April 25, 1875, and one note monthly there-
163 after until June 25, 1876, each note bearing interest at ten per cent. per annum.

No part of this claim has been paid, and by contract it was provided that the title to said cars shall remain in the petitioner until it is all paid.

The railroad company has had the use of said cars since January, 1875, for which nothing has been paid.

The petitioner is willing to accept payment of said last named amount in sixty equal payments of $120.83 each, the first to be made as of July 1st, 1875, and one monthly thereafter until fully paid, all payments subsequent to the first bearing interest at seven per cent. per annum from July 1, 1875, petitioner thus accepting interest at seven per cent. instead of ten, and waiving interest from January 25, 1875, to July 1, 1875.

I find that the said cars, or similar ones, are necessary for the business of the said railroad; and the receiver recommends the proposed contract as one advantageous to the road, whatever may be its future.

The monthly payments would be as follows:

On 100 box-cars	$91 67
" 5 " and ten coal-cars	120 83
	$212 50

164 The terms I find, from the evidence, are fair and reasonable, and I therefore recommend that the receiver be authorized to make the necessary contract and payments as above set forth.

These recommendations are based upon the testimony of General Anderson herewith reported.

All of which is respectfully submitted.

H. W. BISHOP,
Master, &c.

In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH, complainant, *vs.* CHICAGO, DANVILLE AND VINCENNES R. R. Co. et al., defendant.	In chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court.

THURSDAY, *January 27th*, 1876.

Present: Geo. C. Campbell, esq., appearing as solicitor for complainants; E. Walker, esq., appearing as solicitor for The Chicago, D. & V. R. R. Co. and for the receiver thereof, and R. B. Roberts, esq., appearing for Southwestern Car Co.

165 C. S. MILLIARD, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. R. B. Roberts and deposes and says as follows:

Direct examination by Mr. Roberts:

Int. 1. State your name, age, and place of residence.

A. Charles S. Milliard; 35 years old; place of business, Louisville, Kentucky.

2. State your official connections with the Southwestern Car Company.

A. I am president of the Southwestern Car Company of Jeffersonville, Indiana.

3. A corporation?

A. Yes, sir; organized under the laws of the State of Indiana.

4. State, if you please, what claim the car company has against the Chicago, Danville, and Vincennes Railroad. State it fully and particularly, and what arrangement you are willing to make with the receiver of the road in liquidation of the claim. Mr. Milliard, give th s fully to prevent interrogating you particularly.

A. The first claim is for a one-tenth interest in one hundred box-cars built for the Chicago, Danville, and Vincennes Railroad at the price of $550 per car.

5. Amounting to what?

A. Amounting to $5,500. That is the one-tenth that we claim.

166 For this there were ten notes given us, bearing date of January 15, 1875. These cars were delivered for $500 each, and interest at eight per cent., payable monthly, in order to enable the road——

6. Have any of these notes been paid?

A. No portion of this indebtedness has been paid. In order to enable the railroad to purchase these cars we waived all right to the owner-

ship in favor of the parties who furnished the money to pay for them, that is, who furnished nine-tenths of it—the Bristol and South Wales Railway Wagon Company and William A. Adams, jointly. Our second claim is for fifteen cars sold the road—5 box-cars at a price of five hundred and fifty dollars each, and ten coal-cars at a price of four hundred and fifty dollars each. These cars were delivered on the 22d day of January, 1875, the railroad company giving us fifteen notes of five hundred dollars each, payable monthly, and bearing interest at the rate of eight per cent. No portion of that indebtedness has been paid. The ownership of these cars is vested in the car company, by virtue of a lien—the Southwestern Car Company. We are, as a car company, willing to make an agreement with the receiver of this road to deliver to him these cars, and receive as pay the amount of rental (on the fifty-five
167 hundred dollar claim, the first claim) of ninety-one dollars and sixty-seven cents per month for sixty months, with interest at the rate of seven per cent., and on the second claim an amount equivalent to one hundred and twenty-three dollars and eighty-three cents per month for sixty months, deferred payments to bear seven per cent. interest, this agreement to begin on July 1st, 1875.

7. Do you regard that mode of settlement as just and equitable as between these parties?

A. Yes, sir; I do.

In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH, complainant, *vs.* CHICAGO, DANVILLE, AND VINCENNES R. R. Co. et al., defendant.	In chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court.

THURSDAY, *January 27th*, 1876.

Present: Geo. C. Campbell, esq., appearing as solicitor for complainants; E. Walker, esq., for Chicago, Danville, and Vincennes R. R. Co., and the receiver therof, and R. Biddle Roberts for the Southwestern Car Co.

168 ADNA ANDERSON, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. R. B. Roberts, and deposes and says as follows:

Adna Anderson, being first duly sworn, on his oath testified as follows:

Direct examination by Mr. Roberts:

1. You are the receiver of the Chicago, Danville and Vincennes Road, are you, General?

A. I am.

2. Will you state, if you please, what knowledge you have of the claim of The Southwestern Car Company, and what opinion you entertain of their offer to adjust in the manner that has been stated by Mr. Millard, the president of the company? State fully and particularly as it specially interrogated.

A. When I took charge of the road I found this claim of The Southwestern Car Company against the road, which consisted of two parts.

One was for one-tenth interest in one hundred box-cars that had been built by The Southwestern Car Company and were on the road. The amount due was fifty-five hundred dollars, for which notes of the company were in existence. I found a contract existing between the railroad company and The Bristol and South Wales Railway Wagon Com-
169 pany and William A. Adams, of England, by which the railroad company agreed to pay a certain sum per month, amounting to about ten dollars in gold to those parties per car, which payments were to extend through a period of sixty months from the commencement of the contract, that was made the 1st day of January, 1875. The price The Bristol and Wales Wagon Railway Company and William A. Adams were to receive was four hundred and fifty dollars per car in gold, which was considerably below their value, the balance, fifty dollars, in currency.

From the terms of the contract which was in my possession, it appears that The Southwestern Car Company surrendered their lien upon these cars in favor of these parties I have named, who were to furnish nine-tenths of the money, and they did that in order to enable the railroad company to make the contract, as without it the English parties who furnished the money would not have done so, and therefore the cars could not be obtained. It was very essential that the road should have these cars. The second claim I found was for fifteen cars that had been built by The Southwestern Car Company for this road, five
170 box-cars, at five hundred and fifty dollars each, and ten coal-cars, at four hundred and fifty dollars each, for which the railroad company had given its notes, and none of which had been paid. The car company retained the title to the cars, and the cars now belong to The Southwestern Car Company. The railroad has really no title to them.

Since they were delivered, in January, 1875, they have been in constant use on the road as a part of its regular equipment, and they are necessary, and they, or some other cars, are indispensable to the proper operation of the road. A proposition was made to me some time ago by the Southwestern Car Company to make the payment for these cars in monthly instalments running through sixty months, commencing with the 1st of July, 1875, and paying one-sixtieth of the amount with seven per cent. interest on the deferred payments from the 1st day of July, 1875, until the whole amount was paid. This arrangement I regard as a great advantage to the railroad company, as that makes the payments easy, and the cars will earn the money while it is being done.

3. State, if you please, whether this is such a contract as will benefit the road in any hands into which it may pass.

171 A. I think it is a contract of value to the road in any circumstances whatever, and one that any owners would be glad to carry out. It is for the interest of the company to make it, no matter who the owners may be hereafter, whether the road remains in the hands of the company *as* is sold under a foreclosure.

The undersigned hereby agrees with the receiver of the Chicago, Danville and Vincennes Railroad Company, as follows, in regard to the payment for five box-cars and ten coal-cars now in use on said Chicago, Danville and Vincennes Railroad, of which the ownership is now in the undersigned.

The price is:

For box-cars, $550 each	$2,750
For coal-cars, $450	4,500
Total	7,250

The undersigned agree that they will sell said cars to said receiver at the above price in sixty monthly instalments, payable on the first of each month, commencing July 1st, 1875.

On all instalments due after July 1st, 1875, seven per cent. interest to be paid from July 1st, 1875.

When the whole amount has been thus paid the title and full
172 ownership of the said cars shall be in said railroad company or its successors or assigns. The title to remain in the undersigned until the whole amount is paid.

The railroad company or its successors may at any time obtain full title and ownership of said cars by paying in full the amounts then due, or they may increase the monthly payments at any time for the purpose of sooner paying the debt. The undersigned will also receive payment on the same terms for the amount due them on account of one hundred box-cars built by them, of which The Bristol and South Wales Wagon Company and William A. Adams now hold the title, and which are also in use on said Chicago, Danville and Vincennes Railroad.

The undersigned will surrender to said receiver all notes or obligations of said railroad company, issued on account of said cars, upon execution of a contract with said receiver, on the foregoing terms and the confirmation of said contract by the United States court.

(Endorsed:) Filed April 23, '77. W'm H. Bradley, cl'k.

173 Afterwards, to wit, on the twenty-fifth day of April, A. D. 1877, said complainants and intervening bondholders filed in said clerk's office their exceptions to said master's report in said-entitled cause, which said exceptions are in the words and figures following, to wit:

Exceptions to master's report.

Circuit court of the United States, northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company and others.

In re the intervening petition of The Southwestern Car Company.

The complainants, William R. Fosdick, James D. Fish, and the intervening bondholders, Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, and others, except to the master's report in the matter of the said intervening petition, and for cause say:

First. That the said report of the master is not supported by the evidence.

Second. That the said master's report and the conclusions thereof are contrary to law.

Third. That it appears from the said evidence and master's report
174 that the title to the property is already in the Chicago, Danville and Vincennes Railroad Company, and that the said petitioner has no title to said property as against these exceptants.

Fourth. That the master erred in reporting in favor of the said petitioner being entitled to said property or to any allowance or compensation therefor upon any ground whatever.

For which reasons these complainants pray that the said report may be rejected and the said petition be dismissed.

CRAWFORD AND McCONNELL,
Sol's for Exceptants.

(Endorsed:) Filed April 25, '77. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 6th day of October, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Thomas Drummond, judge, is the following entry, to wit:

WILLIAM R. FOSDICK AND JAMES D. FISH
v.
CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY et al. } In chancery.

In the matter of the intervening petition of The Southwestern Car Company.

And now at this day the said intervening claim of The Southwestern Car Company comes on to be heard upon the evidence taken before Henry W. Bishop, esq., master in chancery of this court; Mess'rs Lawrence, Campbell and Lawrence appearing for said complainants, E. Walker, esq., for the defendants, Mess'rs Crawford and McConnell for the purchasers, and R. Riddle Roberts, esq., for said intervening petitioner.

And it appearing to the court from the evidence that on or about the twenty-fifth day of January, A. D. 1875, the said railroad company purchased of the petitioner five box-cars at the rate or price of $550 each, and ten coal-cars at the rate or price of $450 each, amounting in the aggregate to the sum of seven thousand two hundred and fifty dollars ($7,250), as security for the payment of which the said railroad company gave its certain fifteen promissory notes for the sum of four hun-
dred and eighty-three dollars and thirty-three cents ($483.33) each,
176 payable to the order of said petitioner, the first one April 25, 1875, after date, and one monthly thereafter until all were paid, with interest at ten per cent. per annum, and that the title to said cars was to remain in the said petitioner until all of said notes were paid.

And it further appearing to the court that on or about the fifteenth day of January, A. D. 1875, the said railroad company purchased of the petitioner a one-tenth interest in one hundred box-cars built by petitioner (the remaining nine-tenths interest having been owned by the Bristol and South Wales Wagon Company and William A. Adams, and by the said railroad company at the same date purchased of them), and gave as security for the payment of the purchase-money eleven promissory notes for the sum of five hundred dollars ($500) each, the first of said notes being payable April fifteenth, A. D. 1875, and one monthly thereafter until all were paid.

And it further appearing to the court that the said railroad company and the receiver heretofore appointed in said cause have had the use of said cars since January, A. D. 1875, and that the same or similar ones are necessary for the proper operation of the road, and that all of
177 said cars were furnished at a fair and reasonable price within six months prior to the appointment of the receiver in said cause.

And it further appearing to the court that the contract recommended by the master in his report, is not such a one as would be advisable to be entered into.

The court therefore finds that the claim of the petitioner, amounting to twelve thousand seven hundred and fifty dollars ($12,750), is a just claim upon the fund now in court, and doth order, adjudge, and decree that the clerk of this court, upon the delivery to him of the notes given to secure payment of the purchase-money of said cars, pay to the said petitioner or its solicitor, on receipt of either the sum of twelve thousand seven hundred and fifty dollars ($12,750) so found by the court to be due out of the fund now in court in said cause.

And it is further ordered that the report of Henry W. Bishop, esq., filed in said intervening cause, be not confirmed, but the same is hereby disapproved.

And the complainants herein and the intervening bondholders
178 pray an appeal to the Supreme Court of the United States, which is granted upon any of them entering into a bond in the penal sum of five hundred dollars according to law, to be approved by the court.

And afterwards, to wit, on the 8th day of November, A. D. 1877, said complainants and petitioners, bondholders, by their solicitor, filed in said clerk's office their appeal-bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal-bond.

Know all men by these presents that we are held and firmly bound to The Southwestern Car Company in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which said sum well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this eighth day of November, A. D. 1877.

The condition of the above obligation is such that, whereas, on the sixth (6th) day of October, A. D. 1877, a decree or decretal order was entered in a cause entitled William R. Fosdick and James
179 D. Fish vs. The Chicago, Danville and Vincennes Railroad Company et al., pending in the circuit court of the United States for the northern district of Illinois, decreeing and directing the clerk of the said court to pay to The Southwestern Car Company the sum of twelve thousand seven hundred and fifty($12,750.00) dollars out of the fund in court obtained from the sale of the property of the said railroad company under decree of the said United States court; and whereas the said William R. Fosdick, and James D. Fish, and Frederic W. Huidekoper, Thomas W. Shannon, John M. Denison, George W. Gill, Alanson A. Sumner, Chandler Robbins, and William T. Hickok, bondholders intervening in said cause, have prayed and been allowed an appeal from said decree or decretal order in favor of said Southwestern Car Company to the Supreme Court of the United States:

Now, the condition of this obligation is such that if the said William R. Fosdick, and James D. Fish, and Frederick W. Huidekoper, Thomas W. Shannon, John M. Denison, George W. Gill, Alanson A. Sumner, Chandler Robbins, and William T. Hickok, or any of them, prosecute the said appeal with effect, and perform such judgment, and pay all the costs awarded against them or any of them by the Supreme
180 Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

F. W. HUIDEKOPER. [SEAL.]
T. W. SHANNON AND [SEAL.]
J. M. DENISON, [SEAL.]
By F. W. HUIDEKOPER. [SEAL.]
HENRY CRAWFORD. [SEAL.]
ALANSON S. DUNHAM. [SEAL.]

Approved:

THOMAS DRUMMOND.

(Endorsed:) Filed November 8, 1877. W'm. H. Bradley, clerk.

181 NORTHERN DISTRICT OF ILLINOIS, *ss.:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct transcript of the record of all the proceedings had in said court in the cause wherein William R. Fosdick et al. are the complainants and the Chicago, Danville and Vincennes Railroad Company et al. are the defendants, in the matter of the intervening petition of the Southwestern Car Company, as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this eighth day of November, A. D. 1877, and of our Independence the 102d year.

WM H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 1029. William R. Fosdick & James D. Fish and Frederick W. Huidekoper et al., appellants, vs. The Southwestern Car Company, intervenor. N. Illinois C. C. U. S. Filed 31st December, 1877.

duction to possession is tantamount to a complete investiture of title.

Hunt v. *Bullock*, 23 Ill., 264.
Atkins v. *Burns*, 71 Ill., 326.

HENRY CRAWFORD,
Solicitor for Appellants.

Rolling stock was declared not to be personalty, but in the nature of fixtures, and covered, no matter when acquired, by a mortgage of the railway then made, and to be made.

Palmer v. *Forbes*, 23 Ill., 248.

Such was the settled law of this Court, and of other States, without exception.

The constitutional provision quoted was prospective in its nature and operation, and can only apply *to mortgages executed after its adoption.*

The attempt to invoke this later law to limit the security and impair the obligation of the mortgage contract, uotwithstanding it was clearly valid and exhaustive in its scope when it was executed, would be to give the section a construction which would make it unconstitutional.

Ohio L. Ins. & T. Co. v. *Debolt*, 16 How., 432.

Gelpecke v. *Dubuque*, 1 Wall., 206.

The scope of our mortgage must be adjudged by the charter, and the judicial decisions at the date when it was delivered.

According to *Palmer* v. *Forbes*, and the universal current of authority, it was a security precisely as valid and effective upon all engines and cars acquired after its delivery as those then actually covered, and this result reached wholly independent of the chattel mortgage law.

Before any attempt was made by the intervening petitioners to enforce any pretended claim of lien on their behalf, all this property owned by the corporation on February 27, 1875, was reduced to possession by the actual appointment of a receiver, on a bill to foreclose, claiming a first lien on all the equipment.

Whatever fault in a mortgage acknowledgment, the re-

on the real estate, appellee had first lien on the personalty, especially such as was acquired after the adoption of the Illinois constitution, in 1870.

All this fine drawn distinction is an afterthought. It any such thing had been relied on, the petition of intervention should have claimed the right to an allowance out of the sale of personalty, separately made, and had that fund marshaled not simply to pay the petitioners' claim, but all other labor and supply claims similarly situated.

There is no allegation or proof on which to base this distinction, and avoid a reversal. The petition does not claim a lien on the rolling stock alone, nor was any testimony taken as to the value or existence of equipment acquired after 1870. The facts shown by the record will not, therefore, avail the theory. The bill claims that the mortgage is a first lien *on all the property, real and personal*; the answer admits it, the decree finds and adjudges it. On this decree no errors are assigned by appellee. The validity and scope of the mortgage are, therefore *res judicata*.

But the legal proposition is monstrous. The trust deed was executed and the bonds were sold in open market long before the new constitution. The charter of the company authorized it to borrow money, issue bonds, and secure the payment of the same by a mortgage covering all the property of the company "*then existing or thereafter to be acquired*." As to that company this chartered power palpably emancipated the one mortgage which might be executed on both real and personal property from the operation of the chattel mortgage law. That required a "schedule" of the personalty to be attached. That was impossible in case of *after acquired* personalty.

But at the date of this mortgage, the Supreme Court of Illinois had given a fixed construction to such mortgages.

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But at the date of this mortgage, the Supreme Court of Illinois had given a fixed construction to such mortgages.

evidence, exhibit, or paper whatever to support it; absolutely nothing.

The original petition does not claim it. (Record, p. 74.)

The contract does not show it, but that the cars are to be lettered and numbered as per direction of the general manager. (Record, p. 99.)

The evidence of the only witness, Anderson, does not indicate it; neither does the Master's report. (Record, pp. 94–99.)

The receiver testified the cars were part of the regular equipment; were worth about $300 to $320 each, and $197.00 had been paid on each. (Report, p. 99.)

The claim that the *vendees* cannot hold the cars because not embraced in the schedule of property sold, is pointless, because on this appeal the court is asked to adjudge the rights and liens of the *bondholders*, whether the personalty in dispute has, or has not been sold by the Master.

If it is not sold, the mortgage lien will hold it as against the appellee, if the bondholders' claim to priority be well founded. Nor could any *ex parte* act of the Receiver, such as dealing with Schall as owner, or paying rent, be of any weight in concluding the appellants' rights.

The third paragraph of the argument justifying the decree below under the clause of the trust deed specifying what payment the trustees in possession should make, is sound in law, but bad in application.

The mortgage trustees in possession could only deduct for operating expenses incurred by them while in possession. Likewise the Receiver.

The claim of appellee, not being for expenses incurred by the receivership, ought not to have been given priority out of the fund.

The brief claims that under the new constitution of 1870, the trust mortgage is a nullity, for lack of proper acknowledgment. That while the mortgage is a first lien

After stating the contracts with the railroad company, the petition prays "that the said *contracts* and notes be re- "ferred to the Master in Chancery of this court to ascer- "tain the balance due your petitioners from the said road, "and that the said Master be directed to hear the testi- "mony in relation thereto, and to *ascertain the balance due* "*under such contracts* from the said company to your peti- "tioner." The contracts are attached as exhibits.

"The reference ordered the Master to report as to the "balance for which the said road is liable, *by virtue of said* "*contracts under the terms thereof*." (Orig. Record, p. 73.

The Master reported an amount based on fifty per cent. of the original *contract price* as a compromise settlement of the claim. (Orig. Record, p. 100.)

This petition, report, and attached evidence, furnishes the only basis for the allowance which it is stated is *not* a payment in any way made under or by virtue of any contract for engine purchase.

Statement. "Appellee's locomotives drew their trains, "and brought in their freight charges and passenger fares. "Without them, their road was useless and valueless, and "destitute of revenue."

Correction. Anderson, receiver, swears that the engines were unsuitable, and not valuable for use on the road, and that constituted one of the reasons why he surrendered them early in his receivership. (Orig. Record, p. 105.)

The brief (p. 16) makes the further

Statement. That the court found that each of the Schall cars, when delivered to the railroad company, was marked, "this car is the property of Michael Schall, York, Penn."

On this quite an argument is based to the effect that this was notice of Schall's title.

Correction. This so-called finding of the court has no

" all that has been done, and all the supplies that have been " furnished within a reasonable time."

The allowances below were made on the theory of that " fixed and permanent rule," that " established practice," from which the Circuit Judge, on full examination, declared he would not depart.

The merit and lawfulness of that " fixed rule " and " established practice " are fairly before this Court for its review, and we have the right to demand a decision on that issue.

These appeals are, in fact, test cases, which involve the principle of a considerable number of such allowances which will not admit of separate appeals, in consequence of the amount being below $5,000.

In the brief in Nos. 1,029, 1,030, occurs the

Statement, " so far as this record is concerned, there is no " evidence that Fosdick and Fish, the complainants in the " main case, ever *sought* or prayed an appeal, not having " joined in the bond." (Page 5).

Correction. The point is somewhat immaterial whether they did or not, as certainly the bondholders would be entitled to the use of the trustees' names if necessary; but in these instances it so happens the record distinctly shows that the trustees joined in the exceptions and in the appeal.

Record S. W. Car Co., p. 104.
" Schall, pp. 100, 101.

Statement. " This, it will be observed, was not a pay- " ment for locomotives, nor was it a payment in any way " *made under* or *by virtue of any existing contracts* for the " purchase of locomotives, but was," &c. (Brief, p. 9).

Correction. The allowance could only be justified by the allegations and prayer of some petition.

The only petition filed is at page 72 of the Orig. Record.

bondholders' petition, and answers to their petitions, and exceptions to their allowances, distinctly raising the same questions which we now ask this Court to decide, as to the priority of their mortgage lien ?

Why, if there was such a tacit understanding originally, was it not brought upon the record and reduced to certainty by some paper or affidavit evidencing its existence, after the claimed violations thereof had begun as early as September, 1875 ?

Why, if there was such a tacit understanding, waiving the bondholders' rights, did the court hear and decide the allowances " on the merits," as shown by its own order ? (Hinckley, Record, p. 126.)

The position of the bondholders is very clear and strong. Their rights rest on written and recorded muniments. They did not give them away by any understanding, tacit or otherwise, and the trustees had no lawful power to do so.

A " tacit understanding " on this subject implies that, without it, the rule as to payment of this class of claims would be different, but the very extract cited in the brief from the opinion of the Circuit Judge, (p. 19,) shows that, instead of these allowances resting on the unsatisfactory basis of a tacit understanding covering their payment, he has, on a full examination of their equities, decreed their payment as a legal right.

Thus :

" As I stated during the argument, we have adopted a " rule in this State which has the advantage of being *a* " *fixed and permanent rule.*"

" I do not feel inclined to *depart from* the PRACTICE " *which has been* ESTABLISHED. It does allow the employ- " ing of persons who have done work, and persons who " have furnished supplies and material, a compensation for

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1877.

WILLIAM R. FOSDICK, AND OTHERS,
vs.
THE SOUTHWESTERN CAR COMPANY,
INTERVENOR.
} Chancery.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS, AND BRIEF FOR APPELLANTS.

HENRY CRAWFORD,
Solicitor.

CHICAGO:
PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.

1878.

IN THE

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vs.
THE SOUTHWESTERN CAR COMPANY,
APPELLEE.
Chancery.

STATEMENT OF CASE FOR APPELLANTS.

The Chicago Danville & Vincennes Railroad Company was incorporated by special charter from the State of Illinois, approved February 16, 1865. The act was declared to be a public one. It gave to the corporation perpetual succession, with authority to locate, construct and complete a line of railroad from Lawrence County, Illinois, upon the most eligible route, to and into the city of Chicago, by way of Paris and Danville. Its right of way was declared to be the fee simple property of the corporation.

Its borrowing powers were fixed as follows:

"SEC. 13. That the said railroad company, by this act incorporated, shall have power to borrow money on the credit of the company, not exceeding its authorized capital stock, at a rate of interest not exceeding ten per cent. per annum, payable semi-annually, and may execute bonds therefor with interest coupons thereto affixed, and secure the payment of the same by mortgage or deed of trust on the whole or any part of said railroad property and income of the company *then existing or thereafter to be acquired*, and may annex to said mortgage bonds the privilege of converting the same into the capital stock of said company, etc."

In execution of this power the railroad company on March 10, 1869, executed, acknowledged and delivered a mortgage or trust deed to William R. Fosdick and James D. Fish, as trustees, to secure the payment of $2,500,000 gold bonds. The bonds were declared on their face to be first mortgage bonds. The property covered by the mortgage and standing as their security was:

"All and singular the entire railroad of the party of the first part, lying, being and extending from its terminus in the city of Chicago, Cook County, Illinois, southerly through the counties of Cook, Will, Kankakee, Iroquois and Vermillion, to the city of Danville, and thence southeasterly to a point on the State line of Indiana, joining and connecting at said point with the Evansville, Terre Haute, and Chicago Railroad, being in length about 140 miles, with all its franchises, equipments, property, tolls, issues and profits, and all its lands, tenements, buildings, fixtures, machinery, goods and chattels, connected with or used in the using or operating of said railroad, or appurtenant thereto, and all its rails, ties, fuel, fencing and erections, and all its rights of way and easements, and all cars, engines and tools, and all rents, reservations and reversions of every nature and kind whatever, including all the property between said terminal points which said party of the first part now has or owns and possesses, or may hereafter acquire either in law or equity, of every kind whatever pertinent thereto."

An explicit covenant was contained in the mortgage that the corporation should execute conveyances by way of

further assurance for all property or rights thereafter to be acquired by it.

It was also agreed that on six months default of interest after presentment and demand, the principal of all the bonds should become immediately due and payable, and on demand of the holders of at least one-half the then outstanding bonds, the trustees should enter upon the actual possession and management of all the granted premises, receive all the income, issues and profits thereof, make sale of the mortgaged premises as an entirety, convey the same, and apply the proceeds, after deducting expenses of sale and management, to the payment of interest and principal of said bonds.

This mortgage, in March, 1869, was duly recorded in each of the counties into or through which the line of railroad was situate.

The entire amount of bonds provided for by the mortgage were negotiated by the corporation shortly after their date, and the road was constructed and put in operation.

On February 27, 1875, a bill was filed in the Circuit Court of the United States for the Northern District of Illinois, by the Trustees, Fosdick and Fish, against the railroad company, praying for a foreclosure of the above named first mortgage and a sale of the property.

The amended bill with its exhibits is part of the record on this appeal. It alleges the issue of the 2,500 bonds, the execution and record of the mortgage, a default in the payment of interest thereon on October 1, 1873, and continuously thereafter, the insolvency of the corporation, a demand of the holders of a majority of the bondholders to enforce their security, which is claimed to be a first lien on all the line of railroad and property of the company in existence at the date of instituting such proceed ngs.

A receiver of all the mortgaged property was appointed with the usual powers of management, who continued in

possession until the sale of the road, and its conveyance to the purchasers.

Pending the proceedings, certain representative bondholders were admitted as parties, to protect their interests and speed the cause.

The corporation answered, admitting the execution and record of the mortgage, and that it was a first lien on the property.

A final decree of foreclosure was enrolled in December, 1876. It finds the material averments of the bill to be true, and accordingly decrees that the said trust deed "was and still is *a first lien* upon all of the railroad, property, franchises and appurtenances in said deed of trust described," and orders the property to be sold by the master to pay the first mortgage debt of over $3,000,000, in gold. The railroad, together with its equipments, appurtenances and franchises was sold by the master on Feb. 7, 1877, to Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison, for the sum of $1,450,000. After confirmation the master conveyed the property to the purchasers by deed dated April 16, 1877.

Pending the litigation, the Southwestern Car Company filed an intervening petition on Jan. 27, 1876, alleging in substance: that it was a corporation of Indiana, engaged in the manufacture of cars. Among the claims against the railroad company when the receiver was appointed, the petitioners held two.

First. Petitioner was creditor for one-tenth the purchase price of one hundred box cars, built by it Jan. 15, 1875. This was evidenced by eleven notes of $500 each, with eight per cent. interest; first note falling due April 15, 1875, and then monthly until February, 1876. None of them had been paid. The title to fifty of the cars is in the Bristol and South Wales Wagon Company, and the title to the remaining fifty in W. Adams—the petitioner having

surrendered all right of ownership, as builder, to those parties.

Second. Claim for five box cars, at $2,750, and ten box cars at $4,500, making $7,250. For this, fifteen (15) notes were given on Jan. 25, 1875, first maturing April 25, 1875, and then monthly until June 25, 1876, with interest at ten per cent. All these are unpaid. Petitioner retains title to the fifteen cars until paid for.

The railroad company had use of cars since June, 1875, and they are essential to its operation, and the price is reasonable.

1. There were two tripartite agreements covering the manufacture of the one hundred cars: each dated October 24, 1874: one between the Bristol and South Wales Railway Wagon Company, the car company and the railway, and the second between the last two and William Adams. The contracts were identical. The car company was designated as the builder, the railway company as the tenant, and the third party as the lessor. The agreement recited that the builders had contracted with the tenant to build certain cars. On delivery, the designated lessor was to pay the contract price to the builder, and the "lessor shall thereupon become the absolute owner of the said cars so delivered," which are to be hired by them to the "tenant" railway company, on the following conditions:

The tenancy was for five years, from Dec. 1, 1874, in sixty monthly payments, evidenced by promissory notes executed by the company. The contract provided in the sixteenth section, that on the full payment of the sixty notes and $1 in gold per car, the cars were, without further act to become the absolute property of the railroad company.

2. The contract embracing the fifteen cars was directly between the car company and the railroad company, Jan. 10, 1875. By its terms the manufacturer agrees to construct

for and deliver to the railway the cars. On delivery the railroad company is to execute its fifteen notes, maturing monthly after three months, for $512.89 each, and interest. Title to the cars is to vest in the railway on payment of all the notes, but until then is to remain in the vendor; on default of payment the cars are to be sold at public or private sale, and the proceeds applied on the unpaid notes, and the railroad to remain liable for the remainder.

The trustees and certain first mortgage bondholders who had intervened by leave of court, filed an answer to such petition, claiming that on delivery the title to the cars passed to the railroad corporation, and became subject to the lien of their mortgage. That the written contract purporting to retain title in the vendor, notwithstanding their delivery to, and possession and use by, the company, was void, because not acknowledged or recorded according to the laws of Illinois, and, therefore, the petitioner had no lawful right to their possession or rent. They further denied that any of the income or proceeds of sale could legally be appropriated to the payment of such car purchase to the exclusion of bond payment, and prayed that the petition might be rejected.

The matters of the petition were referred to the standing master to take evidence and report. On April 23, 1877, he filed his report, together with the testimony taken.

C. S. Millard, the superintendent of the car company, testified, in substance: We waived all right to the ownership of the one hundred cars in favor of the parties who furnished nine-tenths of the money paid for their construction.

The title of the fifteen cars is vested in the car company by virtue of the lien retained. The cars were delivered on Jan. 22, 1875. Ever since they have been in constant use on the road as a part of its regular equipment.

Exceptions were interposed by the trustees and bondholders to the master's report, because it was not supported by the evidence, and contrary to law.

Oct. 6, 1877, upon hearing of the exceptions, the Court made order on the petition, on the evidence taken before the master, reciting the contract for the fifteen cars, and that title was to remain in the petitioner until all of the notes were paid, and the notes given for the one-tenth interest in the one hundred cars. It appears the road and the receiver has had use of the cars since Jan., 1875, that they were necessary for the use of the road, and were furnished at a fair and reasonable price in the six months prior to the appointment of the receiver in this cause. Accordingly, finds that $12,750 is a just claim upon the fund in court, and orders that clerk out of the fund pay that sum.

From this decree ordering the payment of money to petitioner out of the proceeds of the sale, trustees and intervening bondholders prayed an appeal to the Supreme Court, which was allowed and has been perfected.

ERRORS ASSIGNED BY APPELLANTS.

1. The decree of the court awarding payment for cars purchased in the six months prior to the receivership, out of the sale proceeds, was contrary to law.

2. The title to the cars passed to the railroad company on delivery, and the property became subject at once to the lien of the first mortgage, because the written contract undertaking to reserve title in the vendor was not executed, acknowledged, or recorded as required by law.

3. The court erred in making the allowance to the petitioner out of the proceeds of the sale of the mortgaged premises, in preference to the payment of the bonds which were explicitly secured thereby.

4. The court erred in decreeing any title or relief to said petitioner based on such illegal and unrecorded contract.

ARGUMENT FOR APPELLANTS.

This appeal involves only questions of law. The facts are without controversy, and can be briefly stated.

A railroad corporation of Illinois executed a first mortgage upon all its property to secure an issue of bonds. The conveyance was in every respect valid. It was duly recorded in March, 1869, in all the counties in which the road was situate.

A fund is in the registry of the Circuit Court, arising exclusively from a sale of the railway under a foreclosure of that mortgage. The entire sale proceeds will pay less than half the amount decreed to be due on the bonds secured thereby.

A car manufacturer, in 1875, sold cars to the railroad company. The fifteen car contract declared the cars to remain the property of the Southwestern Car Company until paid for.

The title to the one hundred cars was agreed to remain in the Bristol & South Wales Wagon Company and W. Adams, as before stated.

These contracts were never acknowledged or recorded.

The cars were all delivered to the company, remained in its continued possession and use, then passed into the custody of the receiver until the road was sold by the master, when they came into the possession of the purchasers.

On these facts, the bondholders and their trustees, relying on the priority of their recorded mortgage of 1869, claimed that their lien bound the cars from their delivery, and the entire proceeds of the sale ought therefore to be distributed to the holders of bonds secured by that conveyance, in preference to any other creditors.

At the circuit the vendor of the cars defeated the priority claimed for the mortgage bonds and recovered out of the

sale proceeds $12,750 for the purchase price of the cars within the six months prior to the foreclosure suit.

Whether the eminent equity judge who pronounced these rulings has correctly apprehended and enforced the respective rights of the bond and other creditors upon the fund in court, is to be resolved upon this appeal.

The errors which underlie the decree may be fully considered under two propositions.

I.

EVEN IF IT SHOULD BE DECIDED THAT THE TITLE TO THE CARS HAS ALWAYS BEEN IN THE CAR COMPANY, THE CIRCUIT COURT HAD NO LAWFUL POWER TO DEFEAT THE FIRST MORTGAGE SECURITY, BY APPROPRIATING ANY PART OF THE PROCEEDS OF SALE TO PAY A CAR PURCHASE LIABILITY, INCURRED BY THE MORTGAGOR CORPORATION, YEARS AFTER THE LIEN OF THE MORTGAGE HAD BECOME FIXED AND PARAMOUNT.

The Circuit Court, in ordering payment of the $12,750, must obviously have proceeded upon the theory that the ownership of the cars was in petitioner. It will be argued hereafter that the title was not in it as against the mortgagees. At present it will be contended that, even on the chosen theory of the court below, the recoveries against the fund ought to be reversed, because it can be demonstrated they are contrary to well established principles of law, and founded in violation of an express statute which determines the rights of the contestants.

The validity, character, or amount of petitioner's claim as *against the corporation*, are not involved in this contro-

versy. Neither is this a contention over the distribution of net income realized from the working of the railway by the receiver. The precise question is—can a fund arising exclusively from a foreclosure sale, although grossly inadequate to pay the mortgage debt, be legally seized upon, by a court of equity and appropriated to the payment in full of an open debt of the mortgagor, which had been incurred years after the record of an encumbrance, specifically charging the property sold?

This judicial action in decreeing that the debt last created should be first in the order of payment, must obviously be justified on the theory that the car rental constituted a preferential charge, either on general legal principles or by virtue of some positive statute, or because a court of chancery in the foreclosure of a railway mortgage is vested with a peculiar discretionary jurisdiction to enforce the payment of liabilities incurred for labor and supplies purchased for or used in the operation of the road.

On any of these grounds the decree is wholly indefensible.

1. If the rights of the contestants are to be tested by those legal principles which have so uniformly established and protected the estate of mortgagees under the registry laws, the result would plainly reverse the decree.

The lien of appellants' mortgage became effective in March, 1869, by its record. Indeed the Court decrees it a first lien.

The elementary doctrine underlying the recording acts is, that any creditor claiming under a contract relating to the mortgaged estate made after the record of the encumbrance and without privity of the mortgagee must hold his rights subject in all things to the prior mortgage.

Rogers v. *Humphreys*, 4 Ad. & El., 299.
Haven v. *Adams*, 4 Allen, 80.
Crosby v. *Harlow*, 21 Maine, 499.
Ellis v. *B. H. & E. R. R.*, 107 Mass., 1.

The Statute of Illinois is express :

"The record of all such deeds, mortgages or other instruments in writing so acknowledged as aforesaid shall be taken, and the same is hereby declared to be good and effectual in law, to charge any purchaser, mortgagee or creditor with notice of the existence of such deed, mortgage or other instrument in writing from and after the time when such deed, mortgage or other instrument was actually filed for record in the proper office."

Gross' Stat., Chap. 24, § 19.

The judicial construction of this act has with unvarying strictness charged subsequent creditors with full notice of the rights of the first recorded lienor and ruled that it was impossible for them to acquire any greater estate or equities in the encumbered estate than was possessed by the mortgagor.

Warner v. *Helen*, 1 Gilm., 220.
Kruse v. *Scripps*, 11 Ill., 98.

This principle subordinates all later engagements of the mortgagor, whether by alienation, judgment, lien, lease, or executory contract of any kind.

In the absence of some restrictive statute in force when the first mortgage is executed and recorded, the rule is of universal application that all later liens, whether by express contract or arising by operation of law, are restricted in their operation and enforcement to the residuary interest of the owner after full satisfaction of the elder encumbrance of record.

Judson v. *Stephens*, 75 Ill., 257.
McCarty v. *Carter*, 49 Ill., 53.

In those States where by express legislative enactment a lien is given to mechanics for labor or material furnished for the improvement of premises, the rule of priority is unchanged.

The statutory lien is judicially treated as an *in invitum*

hypothecation of the land, effected on the day when the work is begun or materials delivered.

If such date is subsequent to a duly recorded incumbrance, the mechanic accepts his statutory lien with full notice, and therefore he can neither recoup the improvement incorporated in the mortgaged premises, nor have his claim preferred to the mortgage.

The action of the lower court distinctly repudiates this most essential principle, and is contrary to all the authorities.

The Supreme Court of Tennessee thus states the true rule of priority between the mortgagee and a subsequent improver of the premises:

"Nor is the mortgagee bound to concur in making repairs, or liable in any sense for the expense without his consent. The case then results in this: that repairs were made at the request of the mortgagor, and upon his credit. The mechanic was also entitled to a lien on the mortgagor's interest in the land as a security for the payment. But as there was a prior lien of which the mechanic had notice, and as the interest of the mortgagor is subject to that lien, the mechanic could acquire no greater or higher interest by his contract with the mortgagor than that which the mortgagor possessed. The mechanic knew, or might have known, of the existence of the prior lien, and has no cause to complain that it is entitled to priority of payment. Under a different rule it would be in the power of the mortgagor to destroy the security by erecting costly improvements, the expense of which the estate improved could not be able to pay; and therefore the mortgagee is entitled to priority of payment over the lien of the mechanic for work done after notice of the existence of the prior lien, and the registry of the mortgage is such notice."

Reed v. *Bank of Tenn.*, 1 Sneed, 262.

In a case where priority was claimed on the improvements only, the court said:

"Conceding counsel to be correct in saying that the lien on the building is absolute, still we do not think that the position that it is prior to that of a previously existing en-

cumbrance upon the land can be maintained. At no time can the lien of the mechanic be said to reach back and cut off that of a prior mortgage or other previous encumbrance."

Jesup v. *Stone*, 13 Wis., 466.

"According to the universal interpretation of such statutes, the mortgagor, while in possession, may bind his interest in the premises, but he has no power to prejudice the estate of the mortgagee without his consent."

Otley v. *Haviland*, 30 Miss., 19.

The Supreme Court of California declined to discuss the subject, saying:

"It is useless for us to adduce any argument in support of the proposition that a mortgage of land carries with it all buildings which are or may be attached to the freehold, and that the rights of the mortgagee cannot be defeated by mechanics' liens, or other encumbrances created without his consent."

Prior v. *Murrie*, 4 Cal., 175.

This court, in a very early case, enforced the same principle.

"The claim, therefore, of the purchaser with notice, to have the value of the improvements which may have been made from the fruits of the property itself, deducted from the price at which the property was sold, seems to the court too unreasonable to admit of a serious argument in its support. No case was cited, nor has this court met with one which affords it the slightest countenance. We must, therefore, overrule this objection."

Hughes v. *Edwards*, 9 Wheat., 500.

Since followed in

Minn. Co. v. *St. Paul Co.*, 2 Wall., 609.

Butt v. *Ellett*, 19 Wall., 544.

A vigorous statement of the rule, and the reasons justifying it, is made by the Supreme Court of Iowa:

"In the case of a mortgage upon land and the buildings thereon before the mechanics' lien attached, the mortgagee will hold the property as against the mechanic.

"How is it when improvements in the nature of addi-

tions or repairs to the building are made after such mortgage?

"The mortgage binds the house; the improvements of the character indicated become a part of the house, and are, as it were, incorporated with it. After the improvements are made, they do not remain separate and distinct from the building. They have lost their distinctive character. The house includes them; they are a part of it, and as such are covered by the mortgage. For the reason that the mortgage binds the improvements as a part of the house, the mechanics' lien cannot defeat the mortgagee's rights.

"These views, we think, are based upon sound principles, and lead to equitable results. Should contrary doctrine prevail, it would be within the power of a mortgagor to ruin the security of his creditor, by making improvements upon the building covered by the mortgage, which in fact and in law, would be but part of the building itself. The case before us serves to illustrate the injustice of such a rule. The mechanic or material man cannot complain. He had notice of the mortgage, and knew, or was bound to know, the purposes for which the materials were furnished or work was done by him."

Getchell v. *Allen*, 34 Iowa, 562.

In Illinois, the highest court has had frequent occasion to construe these lien laws.

It has declared certain fixed principles of their interpretation.

That the lien is acquired at the date when the work or material is furnished.

Smith v. *Hughes*, 24 Ill., 270.

The governing principles upon which priority of lien must be based, is that the vested rights of purchasers or encumbrancers, cannot in any manner or to any degree be affected or displaced when once attached, by any rights subsequently accruing to mechanics.

Williams v. *Chapman*, 17 Ill., 423.
McLagan v. *Brown*, 11 Ill., 519.

In case of an ordinary foreclosure, it would doubtless

be conceded that the principles thus explicitly announced would be controlling, and that the Circuit Court would have no rightful power to invade and annul the clearly defined statutory priority of the bondholders by devoting any part of their distributive share of the sale proceeds to the payment of any junior liability or contract of the mortgagor.

The only claim to emancipate this decree from the control of these ordinary rules applicable to real estate mortgages, must be based upon the theory that mortgages upon railways are exceptional in their character.

This is no longer an open question.

The legislature gave this corporation power to "mortgage" its property to secure bonds. That power, granted to the artificial person, had a fixed and definite meaning in the law.

The mortgage, as to its execution, acknowledgment and record, was left to the operation of those laws and statutes which are applicable to mortgages made by natural persons.

On default they are enforcible by chancery, and the rights of the creditors secured thereby are to be protected by the same legal principles as to registry and priority which preserve the vested rights of other mortgagees.

To this the authorities are express.

The attempt to effect a distinction operating to the prejudice of the mortgage bondholders of a railway, was most distinctly repudiated by this Court at a very early period in the history of this class of securities.

"Conceding the general rules of law to be as here laid down, still an attempt is made by the respondents, to maintain that railroad mortgages made to secure the payment of bonds issued for the purpose of realizing means with which to construct the road, stand upon a different footing from the ordinary mortgages to which such general rules of law are usually applied.

"Authorities are cited which seem to favor the supposed distinction, and the argument in support of it was enforced at the bar with great power of illustration, but, suffice it to say, that in the view of this Court the argument is not sound, and we think that the weight of judicial determination is greatly the other way."

The Supreme Court of Illinois, in construing a similar railway mortgage, used the following language:

"The charter of this road authorized it to issue bonds, and secure the payment of the same by mortgage, or deed of trust, on the whole or any part of the road property and income of the company, then existing or thereafter to be acquired.

"Nowhere do we find any provision made as to the mode of acknowledging or recording these mortgages, or of the effect they shall have upon the rights of subsequent purchasers or creditors. This seems to have been left, by the legislature, to be influenced and controlled by the general law of the State on the subject.

"Where the charter, or a general law of the State, authorizes a railroad company to mortgage either its real or personal estate, and provides no mode of execution or recording, and specifies no form for the instrument, and declares no effect which it shall have upon the rights of the parties, or others, it would seem to follow necessarily, that such mortgages must be subject to and governed by the general laws of the State regulating mortgages; at least so far as the general laws are applicable to the subject matter of the mortgage.

"The trustees took possession as mortgagees, for condition broken, in pursuance of their right distinctly expressed in the trust deed, and the duties of mortgagees in possession are imposed upon them not only by the law, but by the special provisions of the trust deeds and the deed of possession, and these rights and duties are very different from those of an assignee of a failing debtor for the benefit of his creditors. The former are not bound to know, and indeed have no right to know, that there are any debts except the mortgage debt, and when that is paid they must surrender all the residuum to the debtor."

Palmer v. *Forbes*, 23 Ill., 248.

Dunham v. *Railway Co.*, 1 Wall., 268.

Instead, therefore, of a lax construction of such conveyances, tending to a diminution of the estates and priorities of mortgages as ordinarily understood, the consistent practice of the Courts has been to impress upon them a liberal interpretation, and so amplify usual equity remedies as to most thoroughly enforce the security.

The bondholders' right upon the fund is determined by their lien upon the property whose sale produced it.

Their lien became vested in April, 1869, upon the entire railroad and its appurtenances.

Petitioner's claim arising years later is clearly subordinate, and consequently not entitled to any share of the fund until full payment of the bonds.

That such are the rights of the litigants according to fundamental principles, cannot admit of serious challenge.

Usual precedents, therefore, convict the decree below of palpable error, in displacing the priority of the recorded lien.

2. It is equally true that no warrant can be found in any legislation of Illinois for the decree giving preference to the engine manufacturer.

A railway being a *quasi* public work, owned and operated by an artificial person, having only such capacity as the legislature chooses to grant, it is usual, by express statute, to vest borrowing powers and authority to create even an express contract lien.

In the absence of clear and positive enactment, it has been ruled that a railroad company cannot create a statutory charge upon its line of road by incurring a liability for improvements.

Dunn v. *North Mo. R. R.*, 24 Mo., 493.
McAuley v. *West Vt. R. R.*, 33 Vt., 323.

The general mechanics' lien law of Illinois does not, either in terms or by implication, embrace claims for labor

or material furnished to a railway either for the construction, improvement or operation of the road.

The only statute purporting to cover this class of liabilities and authorize a lien upon railroads, is an act passed and in force July 1, 1872, as follows:

"All persons who may have furnished or shall hereafter furnish to any railroad corporation now existing or hereafter to be organized under the laws of this State, any fuel, ties, material, supplies, or any other article or thing necessary for the construction, maintenance, operation or repair of such roads by contract with said corporation; or who shall have done or performed, or shall hereafter do and perform any work or labor for such construction, maintenance, operation or repair by like contract, shall be entitled to be paid for the same as part of the current expenses of said road, and in order to secure the same, shall have a lien upon all the property, real, personal and mixed of said railroad corporation, as against such railroad and as aginst all mortgages or other liens which shall accrue after the commencement of the delivery of said articles or the commencement of said work or labor, provided suit shall be commenced within six months after such contractor or laborer shall have completed his contract with said railroad corporation, or after such labor shall have been performed or material furnished."

Rev. Stat., Ill., (1874,) p. 671, § 51.

The statute embraces *inter alia* uel, ties, material, supplies, or any other article or thing necessary for the operation of such road.

It is not the purpose to claim any narrow construction of the act as to the class of claims included in it. Cars are necessary for the operation of a railroad; should an owner of cars, by an unequivocal contract of rental lease his equipment to an Illinois railroad corporation, i might under a fair construction of the law, be considered furnishing a supply or other article or thing necessary for the operation of the road, and therefore the car rental liability might be entitled to the precise rights and remedies of the statute.

The nature and extent of this statutory right, and especially when invoked as against prior and fixed encumbrances, is not a matter of doubtful construction.

In determining whether a reading is to be put upon a lien law that would overreach prior encumbrances, very strict canons of construction are adopted by the courts.

In the case of *Morgan* v. *Cincinnati*, 3 Wall., 275 where the attempt was made to impress upon an advance of money by a city to a railroad company, a statutory charge paramount to the mortgage, this court said:

"It is insisted it was not only a charge, but a charge prior to the first mortgage, in effect overriding all liens and postponing them. Certainly a statute that can have such a peculiar and strikingly inequitable effect and operation, should be very explicit and positive in order to obtain the assent of a court of law or equity."

And later:

"Mortgagees and others acquiring interest in property against which such a lien is sought to be enforced, have a right, therefore, to call for strict proof of all that is essential to the creation of the lien."

Davis v. *Alvord*, 4 Otto, 545.

In discussing the effect to be given this class of legislation, creating a charge upon land unknown to the common law, the Supreme Court of Illinois designate it as a statute opposed to common right, to be strictly construed, and in no case extended beyond its terms.

Cook v. *Heald*, 21 Ill., 425.
Brady v. *Anderson*, 24 Ill., 112.
Stephens v. *Holmes*, 64 Ill., 336.

This construction given to the local statute by the highest judicial authority of the State, is as controlling on the Federal Courts as though it constituted the text of the statute.

Leffingwell v. *Warren*, 2 Black, 599.
Nichols v. *Levy*, 5 Wall., 433.
R. R. Tax Cases, 2 Otto, 575.

It will be seen upon examination that the plain letter of the statute, instead of displacing prior liens to any extent whatever, has been cautiously framed to protect them, in precise harmony to the correct principles which have been noted.

The lien created by the statute is most explicitly defined and bounded.

The charge is "upon all the property, real, personal and mixed, of said railroad corporation, as against such railroad, *and as against all mortgages or other liens which shall accrue after the commencement of the delivery of said articles*," *etc.*

Mortgages or other liens which accrued *before* the commencement of the delivery of such articles, are left wholly untouched by this statute. Their priorities already assured by the registry laws, were further designed to be protected by express legislation, and as against them the material man has under this statute no lien whatever. His only claim under the law will be to take his incumbrance as of the date when his supplies were first delivered, and if any surplus is left after full payment of the precedent mortgages, to assert his claim upon that, as against the liens which accured after his lien had become vested.

Two recent cases in this Court illustrate the cardinal feature of such enactments:

In *Davis* v. *Bilsland*, 18 Wall., 661, and *Fox* v. *Seal*, 22 Wall., 437, this Court postponed mortgages to mechanics' liens, exclusively upon the ground that by the statutes of the State the lien thereby created for improvements upon realty, was explicitly fixed "at the date of the commence-" ment of the work." In the cases then under discussion, the mortgages had been executed after the mechanic had begun work, and the mortgagees had therefore actual notice of the existence of the prior statutory lien.

In this case the conditions are exactly reversed.

The first mortgage which the Circuit Court displaced by this decree did not accrue after, but years before, the sale of the cars, or their delivery to the company.

By the clear language of the only law which could create any lien whatever, it is declared that against such a prior mortgage the statutory charge was wholly inoperative.

If petitioner had, in apt time, instituted an equitable his action in its own name, to enforce a statutory lien on the railroad property by reason of its claim for car rental, it could only have obtained a decree limited to the company title, and that of such mortgages as had accrued after the date of beginning the delivery of his cars.

The statute would distinctly prohibit the court from disturbing the earlier encumbrances.

Surely the rights of a lienor cannot be amplified, because it seeks to enforce them as an intervenor in a foreclosure case, instead of as an original complainant.

If, therefore, appeal is made to the statutes of Illinois to support the claim below, it suffices to answer. The act is definite, free from all ambiguity, and capable of but one interpretation. A lien upon railway property is given for supplies or material used in operating the road. It is. however, limited in its character. The statute declares it shall have no operation against prior incumbrances; such limitation is in full accord with ordinary legal principles, Applying the statutory limitation to the petitioner's claim, the mortgage bonds ought not to have been postponed, but should have enjoyed the whole fund.

Other tests will reverse the decree.

The character of the car contract, as to the period of credit extended to the corporation, and the date of instituting legal proceedings by petitioner to enforce its claim, did not authorize the court to decree any statutory lien whatever.

The law only fixes the lien "provided suit shall be commenced within six months after such material shall have "been furnished."

The cars were all delivered to the company in 1873. Suit to foreclose the mortgage was instituted in February, 1875. The petition to enforce the claim was filed by petitioner, January 27th, 1876, a year after the first car deliveries were made. This was "the commencement of suit" to enforce its claim of lien. The bar of the statute was complete. After the lapse of six months the statutory charge became utterly extinct, incapable of any judicial enforcement, and the court possessed no power whatever to revive a lien which the statute had declared should no longer exist. The limitation on such claims is matter of substance, and if the action is not instituted within the statutory period, no right at all can be decreed under it at a later date.

Green v. *Jackson Water Co.*, 10 Cal., 374.
Green v. *Ely*, 2 G. Green, 508.
Lunt v. *Stephens*, 75 Ill., 512.
Arbuckle v. *Ill. Midland Ry.*, 81 Ill., 431.

The written contract shows clearly that it was never in the contemplation of the parties that resort should be had to a statutory lien.

The rule is well settled, in the interpretation of such laws, that when a mechanic chooses to give so extended a credit that the final payment does not mature until after the time when a lien must be enforced by legal action, he will be deemed to have voluntarily waived his lien, and relied on the personal security of the party to whom the credit was given.

Phillips on Mech. Liens, § 281.

Says the Supreme Court of Kentucky on this point:
"It was obviously the intention of the Legislature to

limit the duration of the lien, and to require its assertion by suit within the time prescribed. If no suit be brought within the year, the lien given by the statute is lost, there being no other mode allowed for its enforcement. The necessary consequence would seem to be that if a party places himself in a position which renders him unable to bring a suit to enforce the lien within the time limited, he thereby virtually renounces it, having deprived himself by his own voluntary act of the right to enforce it."

Pryor v. *White*, 16 B. Mon., 605.

The fifteen car contract was on eighteen months' credit.

The one hundred car contract was on three years' credit.

The credit granted by the notes is utterly inconsistent with the idea of a statutory lien, the indispensable prerequisite of which is that it must be enforced, if at all, by suit brought within six months from the delivery of the material.

Judged by the statute, therefore, the petitioner had no priority over the mortgage bonds of 1869, because his inchoate statutory lien for material furnished is expressly subordinated to the senior mortgage.

The credit given by the contract extended two years and a half beyond the time within which the lien must be enforced by suit.

The petition filed Jan. 27, 1876, to establish the lien was expressly barred by the statutory limitation of six months.

3. If the Circuit Court had no power, according to the ordinary legal principles applicable to mortgages, or under any statute, to divest or postpone the recorded lien of the first mortgage, the inquiry remains, whether the Chancellor is vested with some exceptional jurisdiction to decree a preference to the operating debts of a railroad corporation before the mortgage lien is recognized.

The attempt will, without doubt, be made to sustain the decrees upon some such theory.

It will be urged that equity constrains a Chancellor to liquidate the corporate liabilities necessarily incurred in operating the railway; that they are in effect expenditures for the benefit of the mortgagee's security, which a Court of Chancery at its discretion can decree shall, be paid out of the property in its custody in preference to the bonds.

Under cover of such specious appeals to what are designated the " principles of natural equity," this class of junior claims have in many recent cases of railway foreclosures, secured judicial recognition to such an extent that the value of the bondholders' security has been most seriously damaged and in some instances been threatened with practical extinction.

The result is accomplished in this manner. A railroad company makes default on its first mortgage bonds. It is insolvent, the security is inadequate, and there is a large accumulation of debt for labor and supplies.

Suit to foreclose is instituted and a receiver appointed. Intervention is, thereupon,made by a legion of floating creditors. The appeals of this necessitous and clamorous class address themselves to the sympathy rather than the judgment of the Chancellor.

Yielding to the promptings of this sentimental equity, orders are entered on the petitions of the ordinary creditors, requiring the receiver to apply the net income of the road to their payment, and if the receiver's earnings be inadequate, it is ordered that the sale proceeds arising under the final decree of foreclosure shall be applied to their full payment before the mortgage debt.

The bondholders have then no recourse but to appeal, supersede the decree, and suffer the damage consequent on

the postponement of the re-organization of the property for several years, or incur the heavy expense of protecting their security by raising the large sum of money necessary to clear off the allowances decreed on the junior claims. This generally embraces all labor and supply debts of the railroad company incurred in the six months anterior to the institution of the foreclosure suit, frequently aggregating several hundred thousand dollars.

It is not possible to conceive of a more dangerous judicial heresy.

In the interest of the large values invested in this class of negotiable securities, it is highly necessary that this Court of last resort should authoritatively decide whether the Circuit Courts of the United States, in the absence of express legislative support, do in fact possess a roving commission to invade in such manner a security definitely fixed by law, and effect a confiscation of the vested rights of bondholders.

As a substantive proposition, it would be a most amazing paradox to claim for a court of equity the power to create a lien upon property. Such authority was never asserted to be properly referable to the domain of what is termed the discretionary jurisdiction of chancery.

Liens are created either by express contract of the parties or arise by operation of some statute. The function of a Court of Chancery is to enforce such. There its jurisdiction ends. It has no creative power whatever. The mere fact that a claim presented is in conformity with the principles of natural justice and equity is not sufficient to authorize such arbitrary exercise of jurisdiction.

Howe v. *Shepherd*, 2 Sumner, 409.

Hardships create no equities.

Even the performance of a benefit to realty by the erection of valuable and permanent improvements will not

vest any power whatever in a Court of Chancery to decree the debt to be a fixed charge upon the land improved.

Independently of statute no equitable principles exist which can aid the mechanic. The whole system of such liens is artificial. It derives its existence and efficacy from positive legislation, and not by reason of any natural equity.

The whole doctrine was summed up by Field, J., in delivering the opinion of the Court, in *Ellison* v. *Jackson Water Co.*, 12 Cal., 554.

"The plaintiff cannot, therefore, maintain the lien he asserts under the statute, and outside of the statute there is no lien which can be enforced. Equity raises no lien in relation to real estate, except that of a vendor for purchase money."

Spencer v. *Barnett*, 35 N. Y., 94.
McNeil v. *Borland*, 23 Cal., 144.
McCoy v. *Quick*, 30 Wis., 521.

Says the Supreme Court of Illinois: "It is a mistake to suppose that the Court creates or confers the lien by its decree. The Court only finds and declares that it was in existence. It has no more vigor as a lien after than before the decree."

Clark v. *Moore*, 64 Ill., 275.
Croskey v. *N. W. M. Co.*, 48 Ill., 480.

As a logical result of the proposition, that the lien is purely statutory, arose the doctrine of strict construction.

"The lien as given by statute is in derogation of the common law, is secret in its nature, no notice being required by record or otherwise, either to creditors or purchasers, and it should, therefore, receive a strict construction. This lien, like all others of the same character, should be fairly enforced when the party brings himself within the provisions of the statute, but it should not be extended to cases falling within the reason, but not provided for by the language, of the statute."

Brady v. *Anderson*, 24 Ill., 112.

Stephens v. *Holmes*, 64 Ill., 336.
Rothgerber v. *Dupy*, 64 Ill., 452.

When attempt was made to induce the Supreme Court of Illinois to enforce a lien not warranted by the statute, it was answered :

" We are forbidden to bring cases within it which the legislature have not included. Should we do so, we would be justly chargeable with judicial legislation. It is far better to leave omitted cases to the future action of the same power that enacts the law.

" We can see no justice or propriety in extending the law by liberal construction, which is partial in its operation, designed to benefit one class of the community over all others, and opposed to common right, *so as to create mortgages and secret liens in cases where the legislature have not said they should exist. We further say we have no right to create a lien when the statute has not.*"

Phillips v. *Stone*, 25 Ill., 80.
Cook v. *Heald*, 21 Ill., 425.

In treating of the nature of equitable jurisdiction invoked to enforce this species of liens, this Court ruled:

" The jurisdiction of the Court rests on the statute, and can extend no further."

Canal Co. v. *Gordon*, 6 Wall.

The system of erecting the debt created for the improvement of land into a specific charge upon the property benefited, is utterly unknown in England.

It has never been claimed that the English High Court of Chancery possessed the power on any exceptional equitable considerations, to supply the want of a parliamentary act, by creating and enforcing a lien by its decree.

The Circuit Courts of the United States can exercise no equity powers except those conferred by Congress, and those judicial powers which the English High Court of Chancery, acting in its judicial capacity as a Court of Equity, possessed and exercised at the time of the formation of the Constitution.

Fountain v. *Ravenal*, 17 How., 384.

If no instance can be cited from the whole range of English Chancery precedents when equity undertook to enforce a lien created neither by contract nor legislation, we can certainly conclude that the exercise of such a power by the Federal Courts is wholly extra-judicial.

Such is the well established limitation restraining the power of Chancery even as between the land owner and an improver. The illegitimate and dangerous character of the jurisdiction exercised in the decree in this cause can only be thoroughly appreciated, when it is considered that it not only assumes to create a lien as against the owner, but to enforce it to the injury of prior recorded encumbrances, contrary to every principle which distinguishes equity jurisprudence, repudiating the prohibition of express statute and the unequivocal commands of repeated precedents which it had no right to disobey.

The elementary principles of equity forbid such jostling of priorities as was attempted by this decree.

1. A Court of Chancery takes no note of special considerations attending the creation of debt.

All liabilities founded in good faith on valuable and adequate consideration, are equally meritorious in a Court of Chancery. The money loaned on bonds to originally construct and equip a railroad is entitled to equal favor with the claim of the laborer and material man who contribute to its later operation.

If, therefore, the debt upon the bonds was created years prior to the furnishing of supplies, and was first enforced by suit and sequestration of the property, the maxim, who is first in time is strongest in right, would require the payment of the bonds in preference to the material debts. The bondholders' right was a fixed legal one. Prior legal rights cannot be made to yield to later chance equities. To deprive a party of the priority given him by contract or statute, it must be against conscience for him to enjoy it.

2. But the statute fixed the right of the bondholder as a legal lien upon the property as of the date of record in March, 1869. As equity abhors secret liens, it would be a marvelous contradiction to postpone a recorded lien of five years' standing to a mere debt of recent creation, having no security attending it. It is the doctrine of equity that a party will not be relieved from the obvious consequences of his own contracts if he has failed to exercise common prudence. By the statute petitioner was bound to take notice of the recorded mortgage, and entering into a later engagement with the mortgagor, it deliberately subordinated itself to the prior lien. Equity in such cases follows the law and has no power to place the last creditor in a better position than he voluntarily accepted, having full knowledge of all the facts. Chancery never overthrows a valid legal estate.

3. The charter of this railroad company authorized it to execute a mortgage of all its property then existing or thereafter to be acquired. *Ex vi terminorum*, this implied the security was to be paramount, continuous and effectual according to the known rules and usages of law. It contemplated no such absurdity as a mortgage security which the creditor had no absolute and complete right to enforce on default, but which might be attenuated and destroyed at a Chancellor's discretion, transforming it from a first lien into a refuse security, entitled only to such residuum of the property covered as might be graciously left it after the full satisfaction of later sentimental equities.

This trust mortgage actually conveyed the legal title of the property to the trustees. Upon the occurrence of a default on the bonds, they were empowered and required to take actual possession of the entire railroad, its equipments and appendages, sell and convey the same. It was declared that the deed on the execution of this power

should be a bar to the corporation, and all claiming under or through it subsequent to the date of the mortgage.

This power of sale is part of the security on which the creditor has a right to rely, and which a Court of Equity must respect and enforce on the occurrence of the specified default.

Hall v. *Sullivan R. R.*, 21 Law Rep., 13[illegible].
Shaw v. *Norf. Co. R. R.*, 5 Gray, 162.
Am. Bridge Co. v. *Heidelbach*, 4 Otto, 8[illegible]0.

When made, the conveyance under the power takes effect by relation to the date of the creation of the power.

It is the function of a Court of Chancery to enforce this right of entry and sale by its process, thus accomplishing the specific performance of the contract.

Gilman v. *Ill. & Miss. Tel. Co.*, 1 Otto, 616.
Dows v. *Mueller*, 4 Otto, 444.

The mortgage contract covenants, that in the event of a sale, the entire proceeds, after expenses, shall be devoted to the payment of the bonded debt.

It would be a palpable breach of trust if the mortgage trustees, in the event of a sale by them, should apply any of the proceeds to the payment of any of the other debts of the corporation.

In the case of a judicial foreclosure the Court constitutes itself the substituted trustee to effectuate the security of the bondholders. They have the undoubted right, therefore, to insist that the distribution of the sale proceeds by the court shall be precisely that provided for by the trust deed in case of a non-judicial sale. Surely it is not competent for a court of equity to dispose of trust property in a manner which would constitute such a clear breach of trust by the designated trustee, as to authorize an injunction to restrain the diversion. Equity can no more commit a lawful breach of trust than can an individual. The Court has no

more right in a foreclosure case to prefer a subsequent debt of the mortgagor than the trustees would have.

It is matter of express and repeated decision by this and other courts that the appointment of a receiver in such cases is equivalent to an entry by the mortgagees, and that thereafter the income of the property would be theirs.

Am. Bridge Co. v. *Heidelback*, 4 Otto, 61.
Gilman v. *Ill. & Miss. Tel. Co.*, 1 Otto 61.
Galveston R. R. v. *Cowdrey*, 11 Wall., 482.
Noyes v. *Rich*, 52 Maine, 116.
Boyd v. *Burke*, 8 Irish Eq., 660.
Howell v. *Ripley*, 10 Paige, 43.
Ellis v. *B. H. & E. R. R.*, 107 Mass., 1.

To acknowledge this principle as to the income, and yet claim that the Court holding the mortgaged estate *in custodia legis* can legitimately appropriate the proceeds of their sale to the liquidation of liabilities other than the bonds, is inconsistent and absurd.

The right to the income is necessarily based on the right to the property itself. There cannot be one scale of distribution for the net income and a different for the sale proceeds. The bondholders are entitled to both income and proceeds until they are fully paid. Subsequent creditors can only look to the surplus.

4. The statute which assumes to impress the quality of a lien upon corporate indebtedness for labor and supplies used in operating the railroad, was enacted in 1872.

The mortgage executed three years prior thereto, as to its extent, interpretation and remedies, is to be judged by the laws in force when it was executed.

Neither the charter nor the general conveyancing laws of Illinois then in force, nor the mortgage itself, furnished any notice to the purchaser of the bonds that there was any reserved power anywhere, either in the State or the

corporation, or the courts, to repudiate or alter the specific nature or priority of the obligation then created.

The ability of the corporation to negotiate its bonds to advantage depended largely—it might be said, altogether—on the inviolable character of the security which was incident to them.

If it had been clearly expressed in the mortgage that by subsequent legislation the company could be endowed with power to create a liability to be preferred to the bonds, the latter would necessarily have been regarded as practically unsecured. They would have commanded little value.

If it is now to be claimed that without any such expressed reservation either in the charter, or laws, or conveyance, the mortgagor corporation may, without consent of the mortgagees, create debts to supersede those specified in the mortgage, then it is obvious that the chartered grant to execute a mortgage was fraudulent, and the bonds have received fictitious credit. It is plain that the subsequent legislation of 1872 cannot be invoked to impair the obligation of the mortgage contract lawfully executed and recorded in 1869.

Yet under this subsequent statute, or by analogy thereto, it will be claimed this decree is justified.

It undertakes to withdraw from the mortgage some of the property. To that extent it dissolves and annihilates the lien, and impairs the obligation of the contract, and diminishes the value of the security.

Under the constitution, the State was wholly incapacitated from confiscating the bondholders' security by any legislation subsequent to the execution of the mortgage.

Wab. & Erie Canal v. *Beers*, 2 Black., 448.
Hawthorne v. *Calef*, 2 Wall., 10.
Von Hoffman v. *Quincy*, 4 Wall., 535.

If the State had no capacity by a solemn act of legislation to accomplish such result, the courts of the State were

equally powerless to repudiate the binding obligation of the contract as tested by the laws in force when it was made.

The mischievous and destroying power denied to the legislative and judicial departments of the State government can hardly be found to exist in our system of federal jurisprudence.

In a kindred attempt to diminish the security of a judgment creditor, this court observes:

"But the act reaches still further. It withdraws the land from the lien of the judgment, and thus destroys a vested right of property, which the creditor had acquired in the pursuit of the remedy to which he was entitled by the law as it stood when the judgment was recovered. It is, in effect, taking one person's property and giving it to another without compensation. This is contrary to reason and justice, and to the fundamental principles of the social compact."

Gunn v. *Barry*, 15 Wall., 622.

The Circuit Court had no more legitimate authority to take a portion of the mortgage security and devote it to subsequent corporate creditors, on any theory whatever, than to order it paid over to the corporation itself, and then let it pay its own floating debts.

In either event, it is taking the mortgagee's property against his consent; or decreeing that there is a reserved, secret, and repugnant power in the mortgage or the law, which enables the debtor, at his pleasure and without limit, to supersede the earliest security by the creation of subsequent debt — in substance, to re-take the estate without payment of the debt for which it was lawfully and distinctly pledged.

It has been well observed that such a decision "is calculated to overthrow the very foundation of contract rights, and virtually to destroy all securities in the form of liens upon property, and to convert an intended benefit attempted to be secured by solemn contract, of which the world had notice, into a positive disadvantage, and to make

the lack of an attempt to provide a contract for security, the very best possible security, through a supposed discretion of the Chancellor.

"The appellants accepted a security; the law attached certain incidents and priorities to that security. The later creditors had no security. Crash comes, and the party attempted to be secured is postponed until the creditor who has no lien is paid in full out of the property mortgaged to the other."

COFER, J. in *Douglass* v. *Cline*, 3 Cent. L. J., 659.

5. The debts created in operating the road after the mortgage may be meritorious as against the corporation. So are all liabilities resting on *bona fide* adequate consideration.

Equitable preferences do not arise as between equally meritorious creditors, still less is the elder required out of his property to discharge the junior.

But in the particular instance under discussion the claim lacks the ordinary equitable characteristics which belong to a mechanic's lien, chargeable against a mortgage. That is made a charge upon land because it visibly increases the mortgage security, and the policy of the statute declares the encumbrancer shall only enjoy the benefit of the added value on terms of compensation.

This principle might be appropriate to work done in the original construction, or permanent betterments or additions to the railway. But debts incurred for labor or supplies employed in the mere operation of the road, in no sense whatever add to the value of the mortgage security.

The operating labor has no effect but to produce the daily earnings which may be spent by the company.

The supplies, such as fuel, oil, waste and other material, are consumed in the use, and disappear.

Such labor and supplies are essential to the operation of the road, but they only serve to the production of income. These earnings when received are the exclusive property

of the company, with the disposition of which the bondholders have no concern.

This is the settled law of this Court.

Galveston R. R. v. *Cowdrey*, 11 Wall., 453.
Am. Bridge Co. v. *Heidelback*, 4 Otto, 800.
Gilman v. *Ill. & Miss. Tel. Co.*, 1 Otto, 603.

If the income produced by this labor and material is received and enjoyed by the mortgagor corporation, it would be a most inequitable proceeding, when the mortgagee makes actual or judicial entry, to charge up against him the mortgagor's debts created for the sole purpose of producing income, to which the bondholders had no right.

The use of the cars on the roadway can only result in wearing it out, and thus make renewals and repairs necessary. As to the cars themselves, the original vendor claims the right to withdraw them from the line as being his exclusive property. According to appellee's own claim, the bondholders have received neither income nor added value to their security by the use of the cars he claims as his.

There is consequently not even the meager ground of an enjoyed benefit which underlies the theory of a mechanic's claim, to be invoked as an equitable consideration to justify a decree compelling the bondholders to pay the demand of the appellee, which in no sense enured to their benefit.

In this view, the decree in effect declares the power of the company to create an indebtedness covering full six months of its operation, receive all the income, appropriate it otherwise, make default on its mortgages, and then compel its bondholders to pay all its operating debts. The first creditor is thus compelled to pay to the later creditor of his own debtor a liability incurred without his privity, and which in no way benefits him.

It is incredible that a court of equity should deliberately introduce such a wanton element of mischief into juris-

prudence, and give it effective and permanent application in dealing with these vast interests.

6. Grave considerations of public policy can be legitimately invoked to overthrow this ruling. The capital of the country is supremely interested in the subject.

Statistics indicate that over two thousand million dollars of railway bonds have been negotiated in this country and are now ontstanding. They are commercial securities of the very highest character.

On foreclosure no defense is admissible against the mortgage to secure them which could not be urged as a plea in an action directly on the bonds themselves.

The value of the bonds as an investment depends in a great measure on the extent and inviolable nature of the security, on the faith of which they were marketed. That security embraces the entire system of public works of this country.

It has been a consistent feature of our jurisprudence that the "rules of property" measuring the rights in land are substantially as fixed and definite in their operations as though they constituted the text of a precise statute.

To substitute for these wise and inflexible rules of property to which the negotiations of years have adjusted themselves, the doctrine that equity can exercise at its discretion the odious and clandestine power of dismantling a landed security and effecting a substantial repudiation of a commercial obligation, is "to seal a commission to a blank "of danger."

"The doctrine contended for would utterly destroy the marketable value of all corporate securities. No prudent man would ever buy a bond in the market if the provisions made for its ultimate redemption could be altered without his consent."

Vose v. *Bronson*, 6 Wall., 456.

It is a sound maxim that the system of law is best which confides as little as possible to the discretion of the judge.

Chancery procedure is subjected to rules as consistent and precise as those which distinguish the common law.

Although a chancellor might establish the precedent of this arbitrary and vague jurisdiction, while striving to administer a sentimental justice, in practice, habitual and intolerable abuses would accumulate.

The views of the different equity courts might not harmonize as to the limitations which ought to be observed in the exercise of this power of making discretionary awards out of the proceeds of a foreclosure sale. One, instead of arbitrarily ignoring the debts beyond six months, might recognize the paramount equity of all operating claims, whenever incurred; while another, on some fanciful but equally sound theory, might order the payment of borrowed money, or endorsed paper, or damages for personal injuries, until it would result that the first mortgage would be compelled to ransom itself from an undefined junior mass of liability, dependent not upon rule but on the uncertain humor of the particular tribunal.

"*Misera est servitus ubi jus est vagum aut incertum.*"

Lord BACON, observing against the vague or arbitrary exercise of judicial power, said that "he would take care "to contain the jurisdiction of the court within the ancient "mere-stones without removing the mark."

It will be found, upon consulting the precedents, that the decree overriding the elder mortgage by the junior debt, is in clear revolt against repeated and authoritative rulings of the courts.

There have been numerous instances where the contention has been made that exceptional cases of hardship or equity authorized a court of chancery to disregard the legal priority of the mortgages upon railways.

Uniformly, the response has been that no such power existed.

One of the earliest attempts to break down the clear pri-

ority of the bondholders was made in the foreclosure case of the Chicago, Alton & St. Louis Railroad in the Circuit Court of the United States for the Northern District of Illinois. A fund was in the registry arising from the sale of the road. Some supply creditors filed petitions to be paid out of the proceeds. In refusing their petitions, the Court said :

"These petioners have no specific lien, legal or equitable, upon this property. The fact that Spencer and Matteson and Litchfield agreed to pay them, did not create a specific lien. It may be conceded that, after the railroad came into the hands of Matteson and was run by him, when the parties who had liens upon the road were paid, that other parties might have an equitable lien upon the earnings of the road, but certainly they would have no right to be paid until prior incumbrances and liens have been satisfied. The fact that Matteson and Litchfield received the personal property cannot make any difference. They received it with the conveyance of real property, and these parties could not follow that personal property merely because Spencer or Matteson, or various other parties who may have had control of the company, owed them a debt.

"It may be admitted that if this road had remained in the hands of the receiver, and the parties for whose benefit he had been appointed had been paid, then these petitioners might have been entitled to receive from the proceeds in the hand of the receiver any surplus ; but what are the facts ?

"Here were large mortgages upon this railroad, which had become hopelessly insolvent. Application was made to the Court to put it in the hands of a receiver, in order that it might be operated for the payment of these mortgages. It was so done. It remained in the hands of the receiver for some years. Subsequently, other creditors applied to the Court, it being manifest that the mortgages could not be paid in that way, or at any rate that the time would be so long that it was desirable for the interests of all that the administration of the road should be changed. They asked the Court to order the property to be sold so that the parties in interest might realize upon their claims. It was accordingly sold, and the fund arising from the sale came under the control of the Court. Now what equitable lien had these petitioners on that fund ? None. Why ?

Because those who had prior liens came in and swept it away, and, more than that, have not, perhaps, been paid. It is precisely like the case of a man who furnishes to the owner of a farm the means of carrying it on, but there is another party who has a lien upon that farm, and it is sold in order that the party who has the prior lien may be paid. Now, the fact that the mechanic or laborer has furnished the means of carrying on the farm would not authorize him to come into a Court of Equity and cut off the prior lien which exists on the farm, and prevent it from being paid.

"These parties ought to be paid. They have a just claim against this road. But it is against an insolvent corporation, and they ask parties who have a prior right and lien to pay them, because those with whom they have dealt cannot do so.

"Upon general principles, I hold what I have always held in all cases of this kind, that the party who has the prior lien is entitled to the preference, and this preference must prevail as against all, except specific liens, and these, of course, have to be paid in their order."

Denniston v. *C. A. & St. Louis R. R. Co.*
4 Biss., 415.

An effort was made to compel a mortgagee in possession of a railway to specifically perform the executory contract of the mortgagor as to freight carriage, but the Court thus enforced the superior title of the encumbrancer:

"The contract of the petitioners confers no rights which attach by way of lien upon the property or franchises of the corporation. If it were otherwise, as it was made subsequent to and with full notice of the mortgage, it would be held subordinate to that incumbrance. Against the mortgagees or against the property of the corporation in their rightful possession, it could have no force, unless the mortgage by its terms reserved to the corporation the power to make contracts in respect to the conduct of its business which should be binding upon the mortgagees.

"To hold the mortgagees bound to render service without compensation on the ground of a contract therefor and prepayment to the mortgagors, would involve the right of the mortgagors to defeat entirely the security thus given, by depriving the property of its capacity to yield available income.

"The principle seems to us to be the same in the two cases. The mortgagee coming in by a superior title takes the subject of his mortgage clear of all obligations contracted by the mortgagor, whether personal to himself or relating to his management of the property. The right of the mortgagee is an absolute one. There is no contingency which would justify the Court in interfering to enable the petitioners to give security for the payment of such sum only as shall be found to be necessary for the payment of interest in arrear upon the bonds. The mortgagees are entitled to the whole property and all its income until payment has been made in fact." *Gooding* v. *Skea*, 103 Mass., 360. It is a legal right which cannot be limited; neither the equity nor the facts of the case warrant any such disposition of it."

Ellis v. *B. H. & Erie R. R.*, 107 Mass., 35 and 37.

In a recent foreclosure case in Alabama, a master reported in favor of paying certain corporate debts before the bonds.

In setting aside the report, Judge Woods said:

"The debt, which it is proposed to pay out of the income of the road, is a floating debt, partly secured by bonds, etc., inferior in rank to the great mass of bonds making up the bonded debt of the defendant company.

"The company has failed to pay the interest on these bonds having the superior lien, and for that reason the trustees of the first mortgage have taken possession of the road for the purpose, among others, of applying its income to the payment of the interest, and if there should be a surplus, to the principal of these bonds. The proposition is to apply, for the reasons stated, the income which the first mortgage bondholders are entitled to, to the payment of the floating debt.

"The fact that the floating debt was contracted in good faith, for the benefit of the railroad company's property, and therefore for the benefit of the bondholders, is true of perhaps all such debts. But that does not give the floating debt creditors any ground upon which to claim that their debt should be paid first.

Galveston R. R. Co. v. *Cowdrey*, 11 Wall., 482.

"But I do not understand that the floating debt creditors claim this application of the income of the road as a legal right.

"It stands simply on the ground that to refuse their payment would be inequitable. But I cannot invade the legal rights of others, to relieve the floating debt creditors from the position in which they have voluntarily placed themselves.

"The facts that a large amount of inferior securities of the railway company, now hypothecated for the floating debt, would be released by its payment, and that a reorganization of the company would be greatly facilitated and the valuable franchises of the company thereby preserved, by the proposed payment of the floating debt, are, doubtless, strong considerations, when addressed to the bondholders themselves. But can this Court waive the right of the bondholders, because we might think it would turn out to their advantage? Can we make a contract for them, because we think it would be a good contract? Have we the power to take the money which belongs to them, and give it to others without their consent, because we think it would be for their interest? They have not consented to this diversion of their money, and no one who is authorized to do so has consented for them. For the trustees to undertake to give assent for the bondholders is clearly outside of their powers and duties, which are plainly prescribed in the deed of trust.

"The Court is, in my judgment, without any power to make the decree recommended by the report. To undertake to do it would be to invade the legal rights of the bondholders, and if established, as within the power of a Court of Equity, would shake the credit of railroad securities throughout the world.

"I must, therefore, decline to adopt the recommendations of the Master."

Duncan v. *Mobile & Ohio R. R.*, 2 Woods, 545.

The Supreme Court of Ohio declined to subvert the mortgage security on application of a creditor who claimed a preference on a debt due him for money advanced to pay taxes on the railway, for bond interest and right of way.

It was said by it:

"It appears that the consideration of the debts for which

the defendant, Hilliard, recovered a judgment was for moneys advanced in payment of interest and taxes, and for right of way. This, it has been suggested, gives him an equitable claim, as against the mortgagees. We have already adverted to the peculiar position in which the nature and character of the mortgages place the directors of the company and the mortgagees. The directors acquire property for the use of the road; this may be done from the earnings of the road, with money borrowed, or upon a credit.

"We are not inclined to exempt the company or the mortgagees from the application of any rule of law which would properly apply to the dealings between them, or to the property which is the subject of these dealings, and which would secure or protect the just claims of third persons. But we are bound to respect the claims of the mortgagees, and do not feel authorized to modify the settled rules of law which govern the dealings of third persons with the directors of the company, so as to impair that security which the mortgagees, under the terms of a contract authorized by law have obtained. It is possible particular cases may arise, which, owing to the peculiar relation between the directors of the company and the mortgagees as to the use and disposition of the property, and increase, may present equitable considerations calling for relief. But we need not discuss or conjecture the character of such cases. It is sufficient to say that none of the claims in this case present such considerations."

Coe v. *The Columbus, Piqua & Indiana R. R. Co.*, 10 Ohio, S. 404.

An action was brought by a contractor, claiming that an agreement for a charge upon the moneys arising from the sale of mortgage bonds entitled him to a preference over the bonds in case the fund was not so appropriated, because his work had largely created the mortgage security.

The claim for priority was rejected, the Court deciding:

"Nor was it in the power of the corporation and the trustees combined to create a charge or lien on the property covered by the mortgage, which would take precedence of that of the trustees of the bondholders, which by the express declaration of the indenture itself, was to be

the 'first and only lien on the property and franchises of the company.' The bondholders advanced their money upon the faith of the security in the existing property and value of the road and its appurtenances, and the property and value to be added by the expenditure of money advanced by them.

"As no property had been acquired under the mortgage except such as by its terms was to be subject to the first and only lien, under the mortgage, in favor of the bondholders. The 'charge' in favor of complainant, if any agreement for such charge had been made, and if such agreement had been assented to by the trustees, would have been subordinate to the first lien created by the indenture. The advances made by the bondholders were made upon the faith of such security, and the fact that complainant's labors had added to the security of the bondholders, would not subordinate their lien to his, if he had one."

Dillon v. *Barnard*, 1 Holmes, 394.

This case is in precise accord with two decisions of this Court.

In the earliest cause, Walker had actually constructed the greater portion of railway with his own means, under an agreement that he was to remain in possession, and receive all the earnings until he was fully paid. Prior to his contract and work there was a recorded mortgage on the projected road, although but little work had been done.

Dunham v. *Railway Co.*, 1 Wall., 268.

In the later case of the *Galveston Railroad* v. *Cowdrey*, 11 Wall., 482, the precise doctrine of natural equity which will be pressed into the service of sustaining this decree, was strongly urged.

A part of the road was laid with iron belonging to Pulsford. An elaborate argument was presented by his counsel, based on analogies from the civil and maritime law, and claiming priority because his capital applied to the road had conserved it and rendered it capable of being operated.

The Court declined to adopt the principle.

"All that it is necessary to say is that the rule referred to has never been introduced into our laws, except in maritime cases, which stand on a particular reason.

"By the common law it is an inflexible rule that whatever is affixed to the freehold becomes a part of the realty, except certain fixtures erected by tenants, which do not affect the question here. The rails put down on the company's road became a part of the road. The road itself was included in the mortgages of the complainants. Pulsford, by allowing his property to go into or become part of the road, consented to its being covered by the mortgages in question.

"He acquired no lien which can displace them. In certain States a lien is created by statute in favor of mechanics, called the mechanics' lien, by which a person furnishing materials or work on a building acquires a lien on the property to secure the payment of his claim. But this kind of lien did not exist in Texas in favor of those who supplied materials or money for constructing railroads. We have no hesitation is saying that Pulsford's claim to priority cannot be maintained."

The Supreme Court of Iowa have reached the same conclusion as to the respective rights of railway mortgagees and creditors furnishing current supplies for the operation of a completed road.

"The plaintiffs are affected with knowledge of the existence of the mortgage, and seeing that the road had mortgaged all its future acquisitions, they could and should have protected themselves by refusing to sell the ties without payment or security.

"It surely cannot be claimed that the plaintiffs, in virtue of their lien, are in any better position than would be a second mortgagee of the road. Could such mortgagee claim priority over a holder of a bond, secured by the first mortgage, but not negotiated until after the second mortgage was issued? It seems to us that to such person it would be said: 'You saw the record of the prior mortgage—knew what it was given to secure; you voluntarily advanced your money subject to the prior encumbrance, and you cannot now be preferred to any part of it.'

"Wherever the acquisition becomes so attached to the principal thing as to become a part of it, the prior mortgage fastens to it, and the lien of the mechanic or ma-

terial man is postponed to that of the mortgagee. This is the result of the decision in 11 Wall., 459, and of our own decisions in *Getchell* v. *Allen*, *supra*, and they are, it seems to us, based upon the soundest principles of law and reason."

Nelson v. *Iowa Eastern R'y Co.*, 2 C. L. J., 741.

This same view was enforced by Circuit Judge Dillon in the foreclosure case of the Burlington, Cedar Rapids & Minn. Railway, after the most elaborate examination. He thus announced the rule:

"Where there is a prior lien on the building or railway, these once having been completed, and a mechanic subsequently does work or furnishes materials, he has a lien; but a lien subordinate to the mortgage, and which must be enforced as such, and it is accompanied with no right of removal.

"When does such lien attach, and how is it to be enforced? As against the owner the lien attaches from the time the repairs are begun. This is plain enough and just. But how does this lien attach as against a prior mortgage of land and building? The answer is, at the same time it attaches as against the owner. The result is that repairs on a previously completed building or railway on which a mortgage rested prior to the commencement of such repairs, do not give a lien which will override the lien of the mortgage. The legislature has not authorized the owner of a building or railway, on which such owner has given a mortgage, to improve the mortgagee out of existence, by making repairs *ad libitum*, and furnishing the owner the necessary credit therefor, by giving the mechanic and material men a lien paramount to the mortgage. Such a view has neither law, justice, equity or public policy to recommend it."

Taylor v. *B., C. R. & M. R'y.*, 9 C. Legal News 329.

These precedents serve to establish that the ruling below was contrary, not only to fundamental legal principles, but also to the universal practice of the courts.

These authorities are controlling. The decree below falls clearly within the principle they enforce. No matter

in what particular guise these alleged superior equities have sought recognition, the courts have with entire accord refused to abrogate the plain and rigid rules whereby the rights of mortgagees are established.

It is not difficult to perceive that the adoption of any obscure and shifting boundaries in their stead is a judicial experiment which will be attended with disaster to all the interests involved.

II.

PETITIONER CANNOT LAWFULLY RECOVER PURCHASE PRICE OF THE CARS, NOR COMPENSATION FOR THEIR USE BY A RECEIVER, IN THE FORECLOSURE SUIT, BECAUSE THE TRUST DEED OF 1869 BECAME A SUBSISTING AND PARAMOUNT LIEN THEREON, AS SOON AS THE CARS WERE PURCHASED BY AND DELIVERED TO THE RAILROAD COMPANY, AND THE WRITTEN CONTRACT UNDER WHICH PETITIONER CLAIMS TITLE IS VOID AS AGAINST THE APPELLANTS, UNDER THE LAWS OF ILLINOIS

Appellee's title is based on the paper contracts of Jan. 1, 1875. The price is fixed and time and place of delivery. The cars had been in the possession and use of the corporation for nearly two years when the foreclosure action was instituted.

If this constituted the whole transaction, it could hardly be contended that the vendor could resume title after completed sale and delivery.
partial payment.

Reliance is made to support the claim of title on that part of the agreement which declares, "cars to remain "the property of petitioner until paid for."

It is an undisputed fact that this contract was never acknowledged or recorded in any manner.

It is also clear that from the date of the original sale in

1875 to the present time, petitioner has never retaken possession of the cars.

On these facts can it recover the title as against the mortgagees?

When the foreclosure action was begun all these cars were on the line of railway, constituting a part of its regular equipment.

The mortgage in explicit terms embraced all cars, engines, etc., of every nature and kind whatever, including all that it might thereafter acquire either in law or equity.

When this mortgage was executed in 1869, this species of conveyance had received an explicit and definite interpretation by the Court.

It was held that such an encumbrance was precisely as effectual to cover and bind after acquired equipment, as though it had all been in existence when the mortgage was delivered.

Such is the doctrine repeatedly announced by this Court:

"A mortgage of a railroad company which covers, in the terms of the mortgage, its engines, cars, and machinery, carries not only those in existence at the date of the mortgage, but such as take their place, or are subsequently added to them by the company, and exist at the time of the foreclosure."

Pennock v. *Coe*, 23 How., 117.
Minn. Co. v. *St. Paul*, 2 Wall., 635.
Putnam v. *Bill*, Oct. Term, 1877.
Galveston R. R. v. *Cowdrey*, 11 Wall., 483.

The Supreme Court of Illinois, in *Palmer* v. *Forbes*, 32 Ill., 248, announced the same view, holding that engines and cars were in the nature of chattels real, and whenever they came into the possession of the company by purchase, became immediately subject to the mortgage.

This construction of the mortgage was, therefore, at its date, a fixed rule of property.

Besides this judicial interpretation, the charter had expressly authorized it to mortgage any of its property to be thereafter acquired.

The mortgage creditors, having this indisputable lien upon these cars purchased from petitioner by the corporation, delivered into its possession and partly paid for, procured the appointment of the receiver.

As it has been before remarked, this was equivalent to an actual entry of possession by the mortgagee.

Boyd v. *Burke*, 8 Irish Eq., 660.
Mass. Hosp. Life Ins. Co. v. *Wilson*, 10 Met., 126.
Am. Bridge Co. v. *Heidelback*, 4 Otto, 800.
Howell v. *Ripley*, 10 Paige, 43.
Astor v. *Turner*, 11 Paige, 436.
Coe v. *C. P. & I. R. R.*, 10 Ohio S., 404.
Noyes v. *Rich*, 52 Maine, 116.

The bondholders' title to the cars is based on the fact that they are described in the mortgage, and that their lien has been still further ripened and enforced by an actual possession taken in their interest.

Can the intervening petitioner overthrow this mortgage and possession, and recover title to the cars?

As to the one hundred cars, there cannot be a pretense that the title is in appellee, nor does the contract provide any lien for the notes executed to it.

Its contract sells the 15 cars to the company. That sale is perfected by actual delivery. The title is attempted to be retained in the vendor, but solely by way of security for the unpaid portion of the contract price.

Petitioner had no right of possession, use, or disposition thereof, and the risk of the property was with the railway.

The exact legal character of the contract is thus defined by the Supreme Court of Illinois:

"It was a conditional sale, with a right of rescission on the part of the vendor, in case the purchaser should fail in payment of his installments. A contract legal and valid as between the parties, but made with the risk on the part of the vendor, of losing his lien in case the property should

be levied upon by creditors of the purchaser while in possession of the latter."

March v. *Wright*, 46 Ill., 488.

The transaction is precisely as though the petitioner had executed a formal bill of sale for the cars, and taken back an unrecorded chattel mortgage for the credit payments.

The contract reserving this lien was never acknowledged or recorded, and the term of credit was for three years.

By the express term of the statutes of Illinois, this writing "having the effect of a lien" upon the cars, is invalid as against "the rights and interests" of the bondholders in actual possession under their specific lien, for three reasons:

1. It is not acknowledged before the officer required by the act.

2. It was never recorded.

3. The credit was longer than the limited term of two years, and the petitioner made no attempt to enforce its claim of lien until about three years from the date of the original car delivery.

Ill. Stat. (1874), Secs. 1 and 3, pp. 711, 712.

Petitioner is prevented by the prohibition of the statute from using the paper as a muniment of title. At common law, delivery is conclusive evidence of a completed sale.

As against the bondholders, the secret paper is wholly unavailing and void. It cannot be introduced to contradict the conclusive evidence of the company's title, as shown by its continued and exclusive possession and enjoyment of the cars.

Although the bondholders or trustees might be fully charged with actual notice of the existence of the paper, it is nevertheless of no validity, because the statute distinctly makes it wholly void, irrespective of notice.

The invalidity of such an unrecorded and unacknowledged contract for a lien is settled by a long and thoroughly consistent line of decisions of the Supreme Court of Illinois interpreting the statute.

Ketcham v. *Watson*, 24 Ill., 591.
Forest v. *Finkham*, 29 Ill., 141.
McCormick v. *Hadden*, 37 Ill., 371.
Sage v. *Browning*, 51 Ill., 217.
Frank v. *Miner*, 50 Ill., 445.

The whole subject has been recently adjudged by this Court in a case where a manufacturer, by a written contract, sold an engine, delivering possession, but reserving title until the purchase price, which was placed in the guise of rent, should be paid.

The judgment on the validity of the transaction was:

"The policy of the law of Illinois will not permit the owner of personal property to sell it, either absolutely or conditionally, and still continue in possession of it. Possession is one of the strongest evidences of title to this class of property, and cannot be rightfully separated from the title, except in the manner pointed out by statute. The courts of Illinois say that to suffer without notice to the world, the real ownership to be in one person, and the ostensible ownership in another, gives a false credit to the latter, and in this way works an injury to third persons. Accordingly the actual owner of personal property, creating an interest in another, to whom it is delivered, if desirous of preserving a lien on it, must comply with the provisions of the chattel mortgage act.

"R. S. Ill., 1874, 711, 712. It requires that the instrument of conveyance, if it have the effect to preserve a mortgage or lien upon the property, must be recorded, whether the party to it be a resident or non-resident of the State.

"If this be not done, the instrument, so far as third persons are concerned, has no validity.

"Secret liens which treat the vendor of personal property who has delivered possession of it to the purchaser, as the owner until the payment of the purchase money, cannot be maintained in Illinois.

"They are held to be constructively fraudulent as to

creditors, and the property, so far as their rights are concerned, is considered as belonging to the purchaser holding the possession."

Hervey v. *R. I. Locomotive Works*, 3 Otto, 672.

For these reasons the decree of the Circuit Court ought not to stand.

The right of the bond creditors to the sale proceeds of the property mortgaged to them, whatever theory of car ownership be true, must suffice to reverse the money decree awarded against the fund.

The order declaring title in petitioner cannot be affirmed without giving effect to a paper which the statute expressly declared shall be void.

HENRY CRAWFORD,
Solicitor for Appellants.

JAN., 1878.

APPELLANT'S REPLY,

AND

SUGGESTIONS AS TO THE ADDITIONAL RECORD.

It was stated from the bench when application was made for the *certiorari*, that all questions as to the admissibility or weight of the new matter would be considered on the final hearing.

The arguments of opposing counsel have been to a considerable degree based on the transcript returned under the *certiorari*.

They contain also a number of serious misrepresentations as to the legal proceedings in the Circuit Court which, unless corrected, might possibly work injury to the appellants' interest.

These suggestions are filed, therefore, mainly to object to the consideration of any of the matter returned under the writ, and to correct these misrepresentations.

A formal motion has been filed to reject the additional transcript.

As the three causes—Nos. 940, 1,029 and 1,030—are substantially submitted together, what is said herein will apply to each case.

1. The additional transcript returned by the clerk of the Circuit Court contains, from pages 1 to 58, inclusive, *portions* of the record in an equity suit of Stephen Osgood against this railway company. These portions, according to the return of the clerk, he embraces, because directed by the counsel for the intervening petitioners. (Add. Record, p. 58.)

The record shows the Osgood case was a separate suit, brought originally in the State Court. The parties are

not the same as in the Fosdick case. None of the appellees are parties, nor have they ever intervened in that cause. It does not appear that any final decree has been reached therein.

The Circuit Court refused to consolidate that cause with the main foreclosure suit, (Add. Record, p. 58,) and they have proceeded separately.

The two causes being distinct, the culled portions of the record of the Osgood case have no legitimate place in the transcript on this appeal. The Court ought, therefore, to decline considering them, and tax the costs thereof against the appellee.

Counsel states in his brief, (page 4,) that it will appear that the receivers appointed by the State Court paid for supplies and other necessaries for the actual working of the road.

If this is designed (as it apparently is) to create the impression that the State Court receivers paid any *corporate* liabilities for supplies, the statement is wholly unsupported by the record, or the actual facts.

Their reports appear on pp. 56, 57 of the Add. Record, and show they disbursed only for *receivers'* operating expenses.

2. The remaining matters of the additional transcript, from pages 59 to 77, pertain to the foreclosure action.

No necessity or propriety existed for embracing the original bill of February 27th, 1875, in the new transcript. It had been superseded by the filing of a new supplemental and amended bill, which was a complete pleading, and on which issue was joined and decree based. The latter with all its exhibits is set out at large in the appellant's original transcript, and sufficed to present every question involved in this appeal.

Attention is called to the certificate of the clerk support-

ing those items of the Add. Record, from p. 65 to 77 inclusive.

He does not certify them to be full, true and correct transcripts of the record, but that they are transcripts of "*drafts or memoranda, with all their indorsements thereon, "from which* the orders were entered of record," &c. (Add. Record, p. 77.)

Such a certificate is unknown both to the statute and the practice of the court.

"Drafts or memoranda," from which orders are entered, constitute no part of the record; still less do "endorsements" on such papers.

The law defines what makes up the record in an equity cause, and the clerk can only certify these.

R. S., §§ 698, 750. Rule 8th, 3d Clause.

The original transcript filed by the appellants was a liberal compliance with the rules of this court. It contained every pleading, exhibit, deposition or entry which could possibly be necessary to a complete understanding and correct decision of the questions at issue between the adversary parties on these appeals.

Obviously this alien matter is sought to be brought into the record for no other reason than to furnish apparent support for the statement found on page 6 of appellee's brief:

"Most all the allowances made by the court for this "and kindred claims, were acquiesced in by all the parties "and counsel concerned, and many of the orders. Cer- "tainly this one, *originally*, was entered by consent, and "the motion to set aside this allowance was an after- "thought consequent upon the near conclusion of the "powers of the court."

In the briefs, in Nos. 1029, 1030 (page 5), similar language is employed as to consent orders, with the broader observation, "*no resistance being made to any of them until*

"*it was apparent that the powers of the Circuit Court* "*were nearing a conclusion.*"

In support of this statement, appellee calls attention of the court to a list of claims asserted to be those paid by consent.

No pretense is made that the particular decrees appealed from were by consent. The record shows they were not. The counsel seek to invent a new legal position. Notwithstanding these allowances were contested, and the bondholders insisted upon their priority at every step, it is argued because they have acquiesced in the allowance of what are described as kindred claims, this appeal must fail.

This court of last resort, discarding the actual adversary state of the record, is, in effect, asked to decree the specific performance of some pretended, vague, "tacit under-stand-"ing had by the court, parties and counsel" as to the payment of floating debt claims.

Certainly, as a legal proposition, absurdity could not go further. This appeal must be decided according to the issue actually involved.

But apart from its legal insufficiency, the appellants challenge the statement, which is made on the basis of these "drafts or memoranda," culled under the direction of the counsel, as uncandid and unwarranted by the record.

Statement. "Most all the allowances made by the Court "for *this* and *kindred* claims were acquiesced in *by all* the "parties and counsel concerned," &c.

Correction. To pretend that the bondholders ever acquiesced in either of these three allowances appealed from, is to boldly disregard the record.

In the Schall and S. W. Car Co. cases, instead of acquiescing, answers to the intervening petitions denying the claims of the petitioners, and insisting on the title and pri-

ority of the bondholders, were filed *on the very day* the petitions were presented.

Record Schall Case, p. 75.
Record S. W. Car Co. case, p. 80.

In the petition of the Hinckley L. Co. Works, (Orig. Record, p. 72), no claim was made of *lien* on the fund, or priority over the bonds, nor was there any prayer for the receiver to pay any money whatever. The only prayer and the reference was to ascertain the *balance due from the Co. under the contract, by the terms thereof.* (p. 73.)

On all the claims, as soon as any attempt was made to pay them out of the fund before payment of the bonds, there were prompt exceptions and resistance.

Hinckley case, Orig. Rec., p. 121.
S. W. Car case, Rec., p. 105.
Schall case, Rec., p. 100.

That will suffice for the pretense that there was any acquiescence in the allowance of *these* claims.

Statement. "Allowances for *kindred* claims were acqui-"esced in by all the parties and counsel concerned." It is in support of this, that attention is called to the list of "claims paid by consent."

Correction. This is undeniably intended to create the impression, that the additional record exhibits nothing except "consent" allowances of claims, which are "kindred" to these appealed from.

If the inquiry were pertinent, the only legitimate and fair method of advising this court judicially, of the exact nature of the allowances, and whether they were "kindred" claims, would have been to incorporate in the record the several petitions, answers, evidence and master's reports, on which the allowances were based. But all these have been cautiously withheld, and nothing presented here save counsel's draft of final allowances wrenched from their context. This court has, therefore, solely, the counsel's

statement that all these are consent allowances of kindred claims.

If he had taken any pains to inform himself of the exact nature of the demands thus sought to do duty as kindred claims, he would have found that nearly the entire list is made up of demands allowed upon wholly different grounds. Phelps (Add. Record, p. 69) was paid for attorney's services in the Osgood case. Ranney for money due, him on receivership account (Rec. p. 70), while Hubbard, Simons, Walker, Parker, Nolan, Williams & Thompson, Block, Carpenter, Smith, Townsend, Fierstein, Shelby, Mallory and Dow, had allowances either for the rent or purchase money of real estate, necessary for the railway, actually used by the receiver, and to which the several petitioners had title.

Rolle, Junker & Co. claim was an adjustment with large shippers for freight advances on an executory shipping contract adopted by the receiver. (Record, p. 68).

The order copied in (Add. Record, p. 86), as to William Adams, was not made by consent. It does not so indicate. It was made *ex parte* on the application of the receiver, without notice indicated to any of the litigants, and long before the appellants had intervened in the cause.

It is true that the claims of Kelly and others, shown on page 67 of the Add. Record, were *kindred* claims, but the exact reliance to be reposed in the statement that they were consent allowances, or that "no resistance was made "to any of them until it was apparent that the powers of "the Circuit Court were nearing a conclusion," (Brief, p. 5), can be best appreciated by the last item of the additional transcript which the counsel opposed going into the return (Add. Record, p. 78).

That shows that the bondholders, within less than four months from the time the Federal Court receiver took possession, filed formal objections to the allowance of these

very claims of Kelly, Hess, English and others, and the allowances made were in every sense adversary proceedings, as shown by the entry (p. 67).

The exact truth is, that the culled claims which are consented to, are not "kindred" with these in controversy, and the record shows the kindred claims were not acquiesced in, but were contested.

Statement. "This case is brought here, it will be ob-
"served, by the vendees or purchasers at the sale," which is "an important fact to be borne in mind in the subse-
"quent examination of the case, because whatever the
"rights of Fosdick & Fish, the trustees, may have been, it
"does not follow that the vendees succeeded to all of
"them." (Brief, p. 5.)

This is repeated in each of the briefs.

Correction. The records all show:

That the exceptions were filed by the intervening bondholders.

That they appeared in the master's office, and contested the orders for payment, and finally, that the appeals were prayed by, and allowed to, the *intervening bondholders.*

Record, Hinckley, p. 126.
" S. W. Car Co., p. 107.
" Schall, p. 101.

The vendees at the sale have never taken any appeal whatever, and we presume it is an important fact to note that the rights of the actual bondholders are, in equity, quite as ample as those of the trustees who are mere stakeholders of the trust property.

Statement. "The opposition *now* made is in gross vio-
"lation of the tacit understanding had by the Court, par-
"ties and counsel, that if this road was to be held by re-
"ceivers, and the power of the court invoked to run and
"manage it for the bondholders, these claims incurred for
"their benefit and in their interest were to be paid."

Correction. This is a clumsy fiction devised to answer the exigencies of a failing cause.

Who were the *other* contracting parties who entered into a "tacit understanding" with a court of justice as to how the anticipated revenues of a railway should be disbursed?

Did the trustees make this compact; and if so, how and when? If the bondholders' rights were, and are paramount, what possible commission did the trustees possess to barter them away by some tacit understanding with a court, or any one else? These bondholders did not intervene in the cause until long after the appointment of a receiver by the Federal Court, and there can be no truthful claim that they had any tacit, or other understanding whatever, on the faith of which the receiver was appointed.

The record very effectually disposes of this claim of a tacit understanding as to this class of demands.

The bill prayed the appointment of a receiver. In granting it, the Court fixed no judicial toll, as the price of doing what was his clear judicial duty to do when an admitted case of a defaulted mortgage, inadequate security, and insolvency of the mortgagor, was made out.

If, then, there was any such court compact, why does not the order appointing a receiver recite that the earnings were to be applied to the payment of floating debt, as a preferred claim? It does not. (Record, p. 1.)

Yet it would be the greatest folly to advance as a chief reason for the allowance of a large sum that, although the law would not ordinarily justify it, there was some tacit understanding with the court that, in such instances, the law must be put aside.

Why, if there was a tacit understanding of the character stated, did the amended bill charge, (page 4,) and the answer concede that the mortgage was a first lien on the whole property, (p. 64), and why did the court entertain the

bondholders' petition, and answers to their petitions, and exceptions to their allowances, distinctly raising the same questions which we now ask this Court to decide, as to the priority of their mortgage lien ?

Why, if there was such a tacit understanding originally, was it not brought upon the record and reduced to certainty by some paper or affidavit evidencing its existence, after the claimed violations thereof had begun as early as September, 1875 ?

Why, if there was such a tacit understanding, waiving the bondholders' rights, did the court hear and decide the allowances "on the merits," as shown by its own order ? (Hinckley, Record, p. 126.)

The position of the bondholders is very clear and strong. Their rights rest on written and recorded muniments. They did not give them away by any understanding, tacit or otherwise, and the trustees had no lawful power to do so.

A "tacit understanding" on this subject implies that, without it, the rule as to payment of this class of claims would be different, but the very extract cited in the brief from the opinion of the Circuit Judge, (p. 19,) shows that, instead of these allowances resting on the unsatisfactory basis of a tacit understanding covering their payment, he has, on a full examination of their equities, decreed their payment as a legal right.

Thus :

"As I stated during the argument, we have adopted a "rule in this State which has the advantage of being *a* "*fixed and permanent rule*."

"I do not feel inclined to *depart from* the PRACTICE "*which has been* ESTABLISHED. It does allow the employ- "ing of persons who have done work, and persons who "have furnished supplies and material, a compensation for

" all that has been done, and all the supplies that have been " furnished within a reasonable time."

The allowances below were made on the theory of that " fixed and permanent rule," that " established practice," from which the Circuit Judge, on full examination, declared he would not depart.

The merit and lawfulness of that " fixed rule " and " established practice " are fairly before this Court for its review, and we have the right to demand a decision on that issue.

These appeals are, in fact, test cases, which involve the principle of a considerable number of such allowances which will not admit of separate appeals, in consequence of the amount being below $5,000.

In the brief in Nos. 1,029, 1,030, occurs the

Statement, " so far as this record is concerned, there is no " evidence that Fosdick and Fish, the complainants in the " main case, ever *sought* or prayed an appeal, not having " joined in the bond." (Page 5).

Correction. The point is somewhat immaterial whether they did or not, as certainly the bondholders would be entitled to the use of the trustees' names if necessary; but in these instances it so happens the record distinctly shows that the trustees joined in the exceptions and in the appeal.

Record S. W. Car Co., p. 104.
" Schall, pp. 100, 101.

Statement. " This, it will be observed, was not a pay- " ment for locomotives, nor was it a payment in any way " *made under* or *by virtue of any existing contracts* for the " purchase of locomotives, but was," &c. (Brief, p. 9).

Correction. The allowance could only be justified by the allegations and prayer of some petition.

The only petition filed is at page 72 of the Orig. Record.

After stating the contracts with the railroad company, the petition prays "that the said *contracts* and notes be re- "ferred to the Master in Chancery of this court to ascer- "tain the balance due your petitioners from the said road, "and that the said Master be directed to hear the testi- "mony in relation thereto, and to *ascertain the balance due* "*under such contracts* from the said company to your peti- "tioner." The contracts are attached as exhibits.

"The reference ordered the Master to report as to the "balance for which the said road is liable, *by virtue of said* "*contracts under the terms thereof*." (Orig. Record, p. 73.

The Master reported an amount based on fifty per cent. of the original *contract price* as a compromise settlement of the claim. (Orig. Record, p. 100.)

This petition, report, and attached evidence, furnishes the only basis for the allowance which it is stated is *not* a payment in any way made under or by virtue of any contract for engine purchase.

Statement. "Appellee's locomotives drew their trains, "and brought in their freight charges and passenger fares. "Without them, their road was useless and valueless, and "destitute of revenue."

Correction. Anderson, receiver, swears that the engines were unsuitable, and not valuable for use on the road, and that constituted one of the reasons why he surrendered them early in his receivership. (Orig. Record, p. 105.)

The brief (p. 16) makes the further

Statement. That the court found that each of the Schall cars, when delivered to the railroad company, was marked, "this car is the property of Michael Schall, York, Penn."

On this quite an argument is based to the effect that this was notice of Schall's title.

Correction. This so-called finding of the court has no

evidence, exhibit, or paper whatever to support it; absolutely nothing.

The original petition does not claim it. (Record, p. 74.)

The contract does not show it, but that the cars are to be lettered and numbered as per direction of the general manager. (Record, p. 99.)

The evidence of the only witness, Anderson, does not indicate it; neither does the Master's report. (Record, pp. 94–99.)

The receiver testified the cars were part of the regular equipment; were worth about $300 to $320 each, and $197.00 had been paid on each. (Report, p. 99.)

The claim that the *vendees* cannot hold the cars because not embraced in the schedule of property sold, is pointless, because on this appeal the court is asked to adjudge the rights and liens of the *bondholders*, whether the personalty in dispute has, or has not been sold by the Master.

If it is not sold, the mortgage lien will hold it as against the appellee, if the bondholders' claim to priority be well founded. Nor could any *ex parte* act of the Receiver, such as dealing with Schall as owner, or paying rent, be of any weight in concluding the appellants' rights.

The third paragraph of the argument justifying the decree below under the clause of the trust deed specifying what payment the trustees in possession should make, is sound in law, but bad in application.

The mortgage trustees in possession could only deduct for operating expenses incurred by them while in possession. Likewise the Receiver.

The claim of appellee, not being for expenses incurred by the receivership, ought not to have been given priority out of the fund.

The brief claims that under the new constitution of 1870, the trust mortgage is a nullity, for lack of proper acknowledgment. That while the mortgage is a first lien

on the real estate, appellee had first lien on the personalty, especially such as was acquired after the adoption of the Illinois constitution, in 1870.

All this fine drawn distinction is an afterthought. If any such thing had been relied on, the petition of intervention should have claimed the right to an allowance out of the sale of personalty, separately made, and had that fund marshaled not simply to pay the petitioners' claim, but all other labor and supply claims similarly situated.

There is no allegation or proof on which to base this distinction, and avoid a reversal. The petition does not claim a lien on the rolling stock alone, nor was any testimony taken as to the value or existence of equipment acquired after 1870. The facts shown by the record will not, therefore, avail the theory. The bill claims that the mortgage is a first lien *on all the property, real and personal*; the answer admits it, the decree finds and adjudges it. On this decree no errors are assigned by appellee. The validity and scope of the mortgage are, therefore *res judicata*.

But the legal proposition is monstrous. The trust deed was executed and the bonds were sold in open market long before the new constitution. The charter of the company authorized it to borrow money, issue bonds, and secure the payment of the same by a mortgage covering all the property of the company "*then existing or thereafter to be acquired.*" As to that company this chartered power palpably emancipated the one mortgage which might be executed on both real and personal property from the operation of the chattel mortgage law. That required a "schedule" of the personalty to be attached. That was impossible in case of *after acquired* personalty.

But at the date of this mortgage, the Supreme Court of Illinois had given a fixed construction to such mortgages.

Rolling stock was declared not to be personalty, but in the nature of fixtures, and covered, no matter when acquired, by a mortgage of the railway then made, and to be made.

Palmer v. *Forbes*, 23 Ill., 248.

Such was the settled law of this Court, and of other States, without exception.

The constitutional provision quoted was prospective in its nature and operation, and can only apply *to mortgages executed after its adoption.*

The attempt to invoke this later law to limit the security and impair the obligation of the mortgage contract, uotwithstanding it was clearly valid and exhaustive in its scope when it was executed, would be to give the section a construction which would make it unconstitutional.

Ohio L. Ins. & T. Co. v. *Debolt*, 16 How., 432.

Gelpecke v. *Dubuque*, 1 Wall., 206.

The scope of our mortgage must be adjudged by the charter, and the judicial decisions at the date when it was delivered.

According to *Palmer* v. *Forbes*, and the universal current of authority, it was a security precisely as valid and effective upon all engines and cars acquired after its delivery as those then actually covered, and this result reached wholly independent of the chattel mortgage law.

Before any attempt was made by the intervening petitioners to enforce any pretended claim of lien on their behalf, all this property owned by the corporation on February 27, 1875, was reduced to possession by the actual appointment of a receiver, on a bill to foreclose, claiming a first lien on all the equipment.

Whatever fault in a mortgage acknowledgment, the re-

duction to possession is tantamount to a complete investiture of title.

Hunt v. *Bullock*, 23 Ill., 204.
Atkins v. *Burns*, 71 Ill., 320.

HENRY CRAWFORD,
Solicitor for Appellants.

U. S. CIRCUIT COURT, N. D. ILL.

WILLIAM H. HACKETT *v.* THE CITY OF OTTAWA.

MUNICIPAL BONDS — POWER TO ISSUE — WHEN NO SPECIAL LEGISLATIVE AUTHORITY—POWER TO BORROW MONEY—WHEN BONDS SHOW NO AUTHORITY ON FACE.

1. That the courts of Illinois have gone to the extreme in sustaining issues of municipal bonds for corporate purposes, when special authority has been delegated by the legislature to the corporation to aid such purposes. But in all these cases there was found by the court to be an express legislative authority to do what it had assumed to do.

2. That no case is found which goes so far as to uphold an issue of bonds by a municipality in aid of even a *quasi* public enterprise, in the hands of a corporation or individuals, unless there was an express or implied delegation of authority to issue such bonds or levy a tax.

3. That the Legislature has not delegated to the City Council of Ottawa the right to make a donation to Mr. Cushman or the manufacturing company, to aid its enterprise of developing the water power of the Fox and Illinois rivers, and therefore it had no power to issue the bonds in question.

4. BONA FIDE HOLDER.—It might be that the bonds would be good in the hands of a *bona fide* purchaser, if the recitals on the face of the bonds did not fully inform any purchaser of the object for which the bonds were issued, which was not a corporate purpose.—[ED. LEGAL NEWS.

BLODGETT, J.—The declaration in this case charges that on the second day of August, 1869, the defendant, the city of Ottawa, a municipal corporation of this State, made and delivered to one, W. H. W. Cushman, its one hundred and twenty (120) bonds or written obligations, for the sum of five hundred (500) dollars each, bearing date on said second day of August, 1869; one-third of which bonds were due in five (5) years, one-third in ten (10) years, and one-third in fifteen (15) years from date, with interest at the rate of ten per cent. (10 per cent.) per annum, payable annually, according to the tenor of certain coupons annexed to each of said bonds; the said coupons being for the sum of fifty dollars each. The bonds it is averred were alike in tenor and amount, except as to time of payment; and one of them is set out at length in the declaration, from which it appears that each of said bonds contained a recital in the following words:

"This is one of one hundred and twenty bonds of like amount and even date herewith, numbered one to one hundred and twenty, respectively, issued by the city of Ottawa, by virtue of the charter of said city, wherein it is provided that the City Council shall have power to borrow money on the credit of the city, and to issue bonds therefor, and pledge the revenue of the city for the payment thereof; provided, that no sum or sums of money shall be borrowed at a greater interest than at ten per cent. per annum. Art. V. Sec. 3d."

"No money shall be borrowed by the City Council until the ordinance passed therefor shall be submi[tted] for, by a majority of th[e] city attending an electi[on] pose. Art. X. Sec. 20; [and] also in accordance with a certain ordinance passed by the City Council of said city, on the 15th day of June, 1869, entitled, 'An ordinance to provide for a loan for municipal purposes;' which ordinance was ratified by a majority of all the qualified voters of said city, at an election holden on the 20th day of July, 1869; and in conformity with an ordinance passed by the City Council of said city on the 30th day of July, 1869, entitled, 'An ordinance to carry into effect the ordinance of June 15th, 1869,' entitled, 'An ordinance to provide for a loan for municipal purposes.'"

The plaintiff avers that, after the issue of said bonds, to wit: on the first day of August, 1870, he became the purchaser, for a valuable consideration, paid by him, of twenty of said bonds, being from No. 41, to No. 61, inclusive, which he bought in the usual course of business, and without notice of any defense thereto; and that he also became at said time, the purchaser and owner of eighty of the interest coupons attached to said bonds so purchased by him, to wit: twenty coupons maturing and payable August 2d, 1874; twenty coupons maturing and payable August 2d, 1875; twenty coupons maturing and payable August 2d, 1876; and twenty coupons maturing and payable August 2d, 1877, and that he is now the holder and bearer thereof, whereby said defendant became liable to pay to said plaintiff the amount due on said several coupons, according to the tenor and effect thereof, and being so liable, said defendant undertook and promised to pay the same, yet has failed to make such payment.

Defendant has plead to the declaration:

1st. The general issue.

2d. A special plea setting forth that the ordinance referred to in the body of said bonds, and alleged to have been passed by the Common Council of said city, on the 15th day of June, 1869, entitled "an ordinance to provide for a loan of money for municipal purposes," was in the words and figures following:

"Be it ordained by the City Council of Ottawa, that the mayor of the city be, and he is hereby authorized to borrow in the name of the city, at a rate of interest not exceeding ten per cent., the sum of sixty thousand dollars, for the use of said city, to be expended in developing the natural advantages of the city for manufacturing purposes; and that bonds of the city be issued therefor, in sums of five hundred dollars each, with interest payable annually. Said bond to be payable, one-third in five years, one-third in ten years, one-third in fifteen years after the thereof.

"Provided, That no application be made of the proceeds of said b except for the purpose aforesaid, a pursuance of an ordinance to be p for that purpose, by the City Co nor until the faithful application proceeds of such bonds to the pu aforesaid, shall be fully secured t city."

The ordinance also contained f provisions in regard to the mo which it should be submitted to of the voters of the city, which it necessary to recite at length.

The plea also avers that the ord referred to in said bonds, purpor have been passed by said City C on the 30th day of July, 1869, e "an ordinance to carry into eff ordinance of June 15, 1869, entit ordinance to provide for a loan nicipal purposes'" was in the fo words:

"Whereas, by an ordinance pa the City Council on the 15th June, 1869, it was provided t mayor of the city should be aut to borrow, in the name of the ci thousand dollars, to be expende veloping the natural advantage city for manufacturing purposes issue the bonds of the city and whereas, it was provided ordinance that the same shoul mitted to the voters of the ci voted for or against at an elect holden for that purpose, on the of July, 1869; and whereas, at tion the said ordinance was r the voters of the city, by a m 823 votes, being a majority of the legal voters of the city.

"Now, therefore, be it ordained by the City Council of the city of Ottawa, that the bonds of the city, for the sum of sixty thousand dollars, be issued by the Mayor, in accordance with the terms and conditions of said ordinance of June 15, 1869, and that he deliver the same to William H. W. Cushman, to be used by him in developing the natural resources of the surroundings of the city, and that the said Cushman is authorized and directed to expend the same in the improvement of the water power upon the Illinois and Fox rivers, within the city, and in the immediate vicinity thereof, under the franchises and powers which have been granted for that purpose by the Legislature of the State, or which may hereafter be granted for that purpose, in the manner which, in his judgment, shall best secure the practical and permanent use of said water power in the city, and its immediate vicinity, provided that said Cushman shall execute and deliver to the Mayor an agreement from him to the city of Ottawa, that he will, without unreasonable or unnecessary delay, cause a good, substantial and sufficient dam to be constructed across the Illinois river, above the city, to bring into use all the available water power of said river at Ottawa, and will construct sufficient head and tail races to make such water power available, said races to be constructed and continued to the Fox river, below the aqueduct and above the island in Fox river, as fast as the same may be required for actual use, and as fast as water power can be leased at fair and reasonable rates, and be brought into actual operation, and that he will also erect a good, substantial and sufficient dam across Fox river, so as to make available the water power of both rivers, at Ottawa, as soon as the additional water power created by such dam across Fox river can be brought into actual use by being leased at reasonable and fair rates, so as to have all the available water power of both rivers at Ottawa, ready for use as rapidly as called for. And provided, also, that said Cushman shall bind himself that if said work is not constructed as aforesaid, that he will return said bonds to the city, or the value of the same, and save it harmless from all loss on account of the same, or on account of interest accruing thereon; and in case said work shall not be completed by said Cushman, then to return a *pro rata* share of said bonds in the proportion that the cost of the work constructed shall bear to the part of the work not constructed, provided that at least one of the dams above mentioned with the races necessary to make the water power thereby created available for practical use, shall be completed, or the whole of said bonds shall be returned to the city by said Cushman.

"The intent of this ordinance being to secure the improvement and development of said water power in this city by appropriating the loan obtained under the ordinance aforesaid for that purpose, or *pro rata*, so far as said water power shall be made available for practical use."

The plea also avers that the "franchises and powers," referred to in the ordinance of July 30, 1869, were certain powers and franchises granted by the Legislature of this State to said W. H. W. Cushman and his associates, by an act approved Feb'y 15, 1851, entitled, "An act to incorporate the Ottawa Manufacturing Company," and that on the 16th day of Feb'y, 1865, an act was passed amending said act, by all which legislation said Ottawa Manufacturing Company was made a private corporation, with power to build and maintain dams across the Illinois and Fox rivers, and to lease the water power so created.

The plea then avers that the matters set forth in said ordinances show the only object and purpose for which said bonds were issued, and avers that said city had no authority to issue bonds for said purpose.

The second special plea sets up the same matter, and avers that Cushman has not constructed certain dams, nor made available the water power of said rivers at Ottawa, and that he hath not performed any of the covenants mentioned in said ordinances, of all which plaintiff had notice.

To these special pleas plaintiff has demurred.

The only question raised by the demurrer is whether the city had power to issue the bonds in question, and whether sufficient appears upon the face of the bonds to put the plaintiff upon notice of the purpose for which the bonds were issued.

It is conceded that no special authority was ever given by the Legislature to the city to make this donation to Cushman or the Ottawa Manufacturing Company. The Manufacturing Company was a purely private corporation, with no public duties or obligations imposed upon it by its charter or any general law.

The power given the City Council, by the charter, to "borrow money on the credit of the city and issue bonds therefor," is given in connection with the general grant of powers to the City Council, and must undoubtedly be construed as a grant to borrow money and issue bonds only for the purpose of carrying out some of the purposes for which the city corporation is created.

Art. 9, of the Constitution of 1848, in force at the time these bonds were issued, clothed municipal corporations with power to levy and collect taxes for corporate purposes.

The courts of this State have gone to their extreme tether in sustaining issues of municipal bonds for corporate purposes, when special authority has been delegated by the legislature, to the corporation, to aid or foster such purpose. Of this class, are the donations and subscriptions, authorized to be made by municipalities, to aid in the construction of railroads, bridges, etc., and more notably, a class of bonds which were issued by towns, cities and counties, to pay bounties to persons who should enlist in the army during the late rebellion, of which Thompson *v.* Taylor. 42d Ill. p. 9, is a leading case. Rogers *v.* Burlington, 3 Wall. 655; and Mitchell *v.* Same, 4 Wall, 270, are the same effect. But in all these cases there was found by the court, to be an express legislative authority for the corporation to do what it had assumed to do.

The principle running through all the cases where these bonds have been sustained, being that the legislature had made the object for which the debt was created a "*corporate purpose*," within the meaning of the Constitution; but I find no case going so far as to uphold an issue of bonds by a municipality in aid of even a *quasi*, public enterprise in the hands of a corporation or individuals, unless there was an express or necessarily implied delegation of authority to issue such bonds, or levy a tax.

The charter of the defendant city clothes its common council with various powers and duties, such as maintaining and improving streets and alleys, building school houses and maintaining schools, to provide for lighting the streets of the city, to establish hospitals, and adopt sanitary measures, adopt a system of sewerage, to sustain a police etc., etc.

These are all corporate purposes. That is, the corporation was created to accomplish these purposes, and I do not intend to be understood as saying that the Legislature might not have delegated to this city council the right to make a donation to Mr. Cushman or the manufacturing company, in its enterprise of developing the water power of the Fox and Illinois rivers, because that question is not now before me. But it is admitted that no such express delegation of power was made; I am, therefore, of opinion that there was no power in the city council to issue the bonds. It is contended, however, that inasmuch as the city council is empowered "*to borrow money on the credit of the city and issue bonds therefor*," these bonds are therefore valid in the hands of a *bona fide* holder who has purchased them for value on the market. This position might be correct if the recitals on the face of the bonds did not fully inform any purchaser of the object for which the bonds were issued. The bonds on their face state that they are issued in pursuance of the clauses in the charter authorizing the city to borrow money and issue bonds, and of two ordinances described by title and date. These ordinances state specifically, the object to which the bonds were to be applied, and put the purchaser upon inquiry as to whether such was a corporate purpose or not.

If the corporation is bound by the recitals in its bond, certainly the purchaser is also; and this plaintiff, in my opinion, had ample notice that these bonds were not issued to carry out any of the express or implied powers granted to this corporation.

The demurrer is overruled.

Exhibit No. 2.

77

J. VANSANT.

Improvement in Apparatus for Lighting Gas by Electricity.

No. 120,469. Patented Oct. 31, 1871.

Fig. 1.

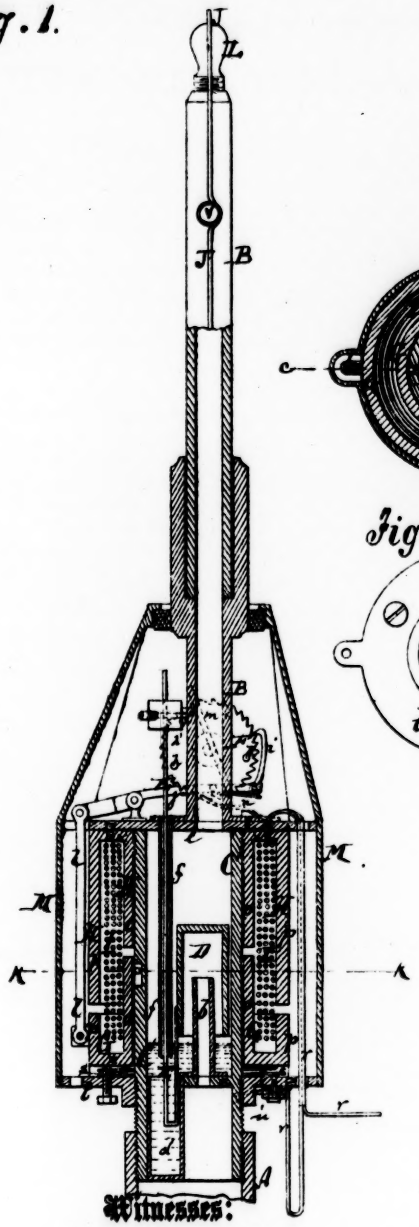


Fig. 2.

Fig. 3.

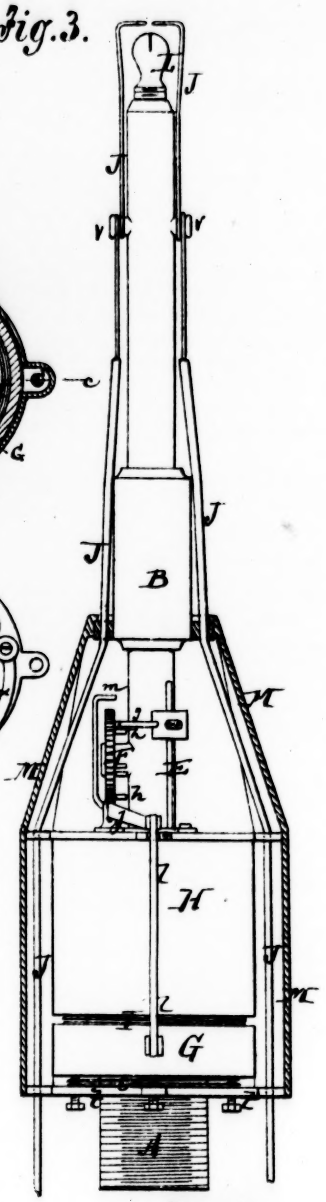
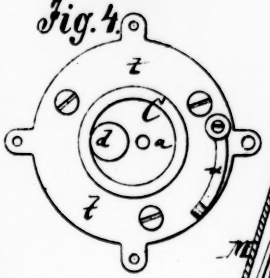


Fig. 4.



Witnesses:

A Bannenendorf

Alex F. Roberts

Inventor:

J. Vansant

per Munn & Co

Attorneys.

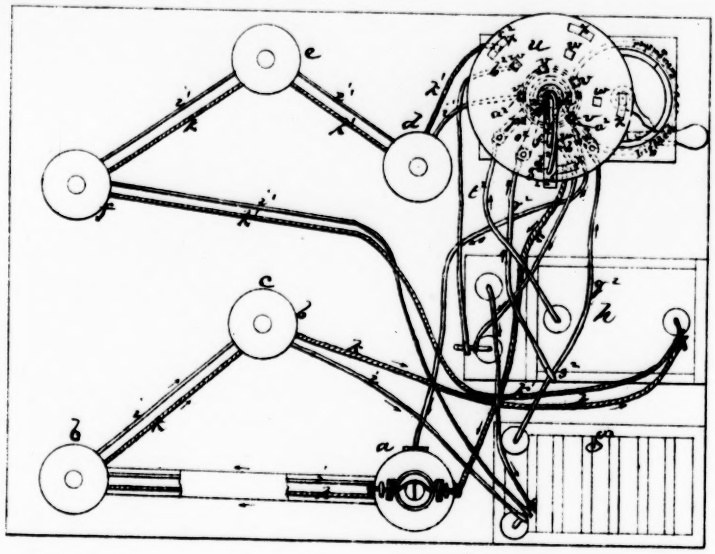
Exhibit No. 3. 80 81

JOHN VANSANT.

Improvement in Apparatus for Lighting and Extinguishing Gas by Electricity.

No. 124,773. Patented March 19, 1872.

A



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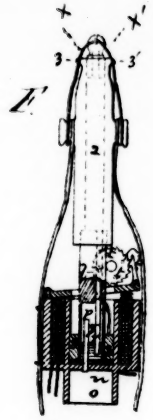
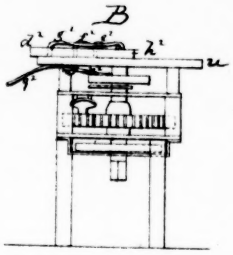


B



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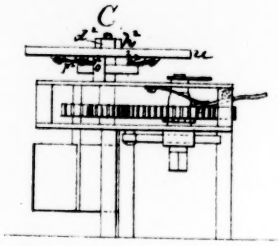
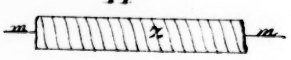


G

H



Witnesses.
M. W. Fothingham.
S. B. Kidder.

Inventor.
John Vansant.
By his Attys.
Crosby & Gould.

86 87

Exhibit No. 4.

JOHN VANSANT.

Improvement in Apparatus for Lighting Gas by Electrical Spark.

No. 127,000. Patented May 21, 1872.

Fig. 1.

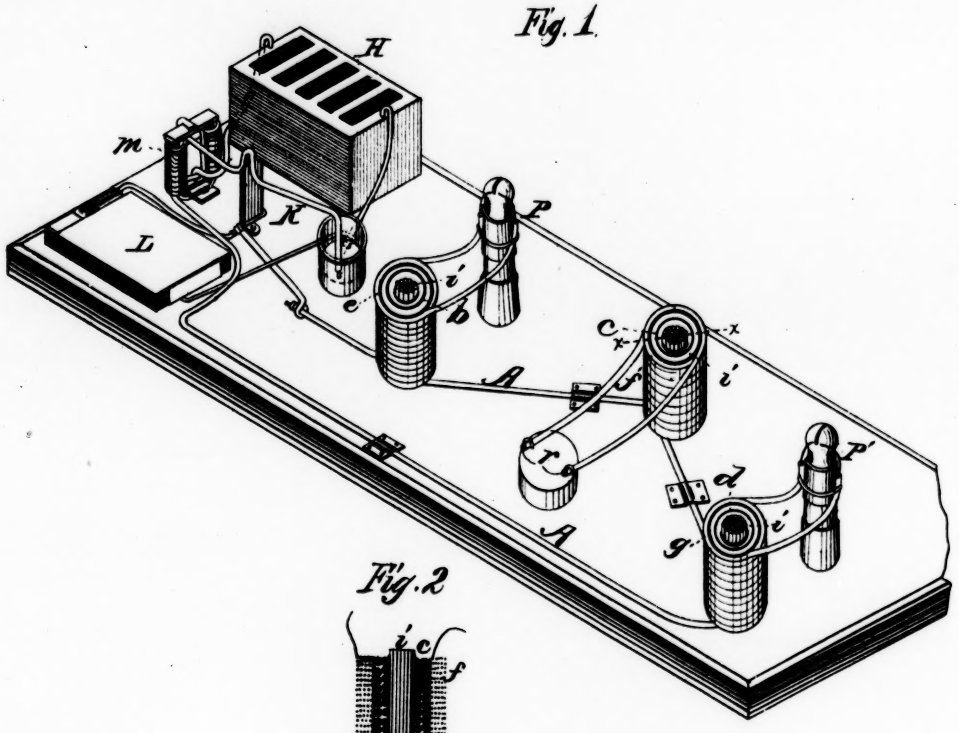
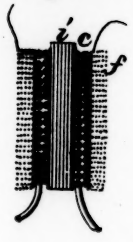


Fig. 2



Witnesses.
C. E. Hudson
L. Mygatt.

Inventor.
John Vansant.

90 91

Exhibit No. 5.

2 Sheets--Sheet 1.

J. VANSANT.

Electrical Gas-Lighting Apparatus.

No. 139,692. Patented June 10, 1873.

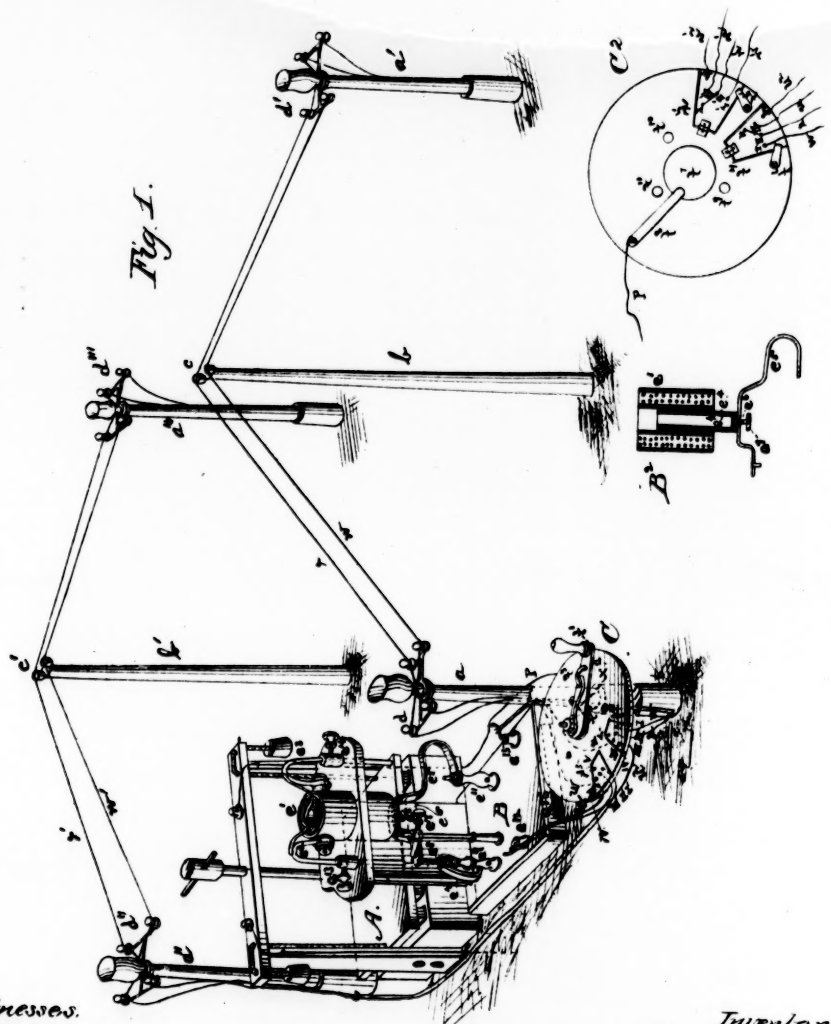


Fig. 1.

Witnesses.
Thos. Lincoln Casey
Chas. D. Lowe

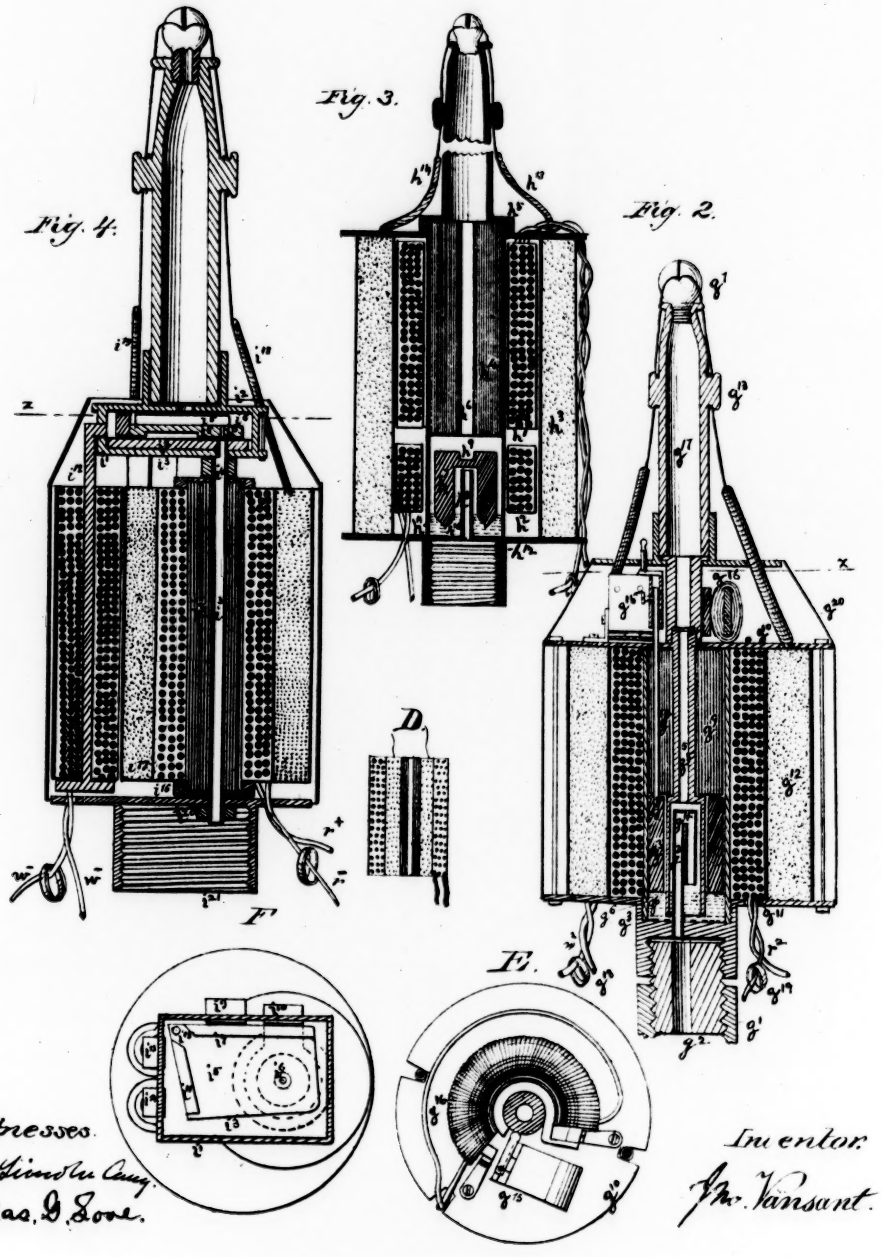
Inventor.
Jno. Vansant.

2 Sheets--Sheet 2.

J. VANSANT.

Electrical Gas-Lighting Apparatus.

No. 139,692. Patented June 10, 1873.



Witnesses.
Thos. Hinsdale Comp.
Chas. D. Love.

Inventor.
J. W. Vansant.